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COMMITTEES
OF ADJUSTMENT


COMMITTEES OF ADJUSTMENT

SELECTED DECISIONS OF THE ONTARIO MUNICIPAL BOARD

Edited by

MICHAEL JOHN SMITHER
MANAGING EDITOR, MUNICIPAL WORLD

VOLUME ONE



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Dedicated to
My Wife

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FOREWORD

Lawyers and members of Committees of Adjustment having anything to do with the preparation, presentation and hearing of applications under *The Planning Act* to such committees, or on appeals therefrom to the Ontario Municipal Board will find this book of invaluable assistance.

The favourable reception accorded the publication in the *Municipal World* during the past five years of some of the Board's decisions on appeals from the Committees of Adjustment has encouraged the Managing Editor M. J. Smither, the person responsible for their editing and publication, to bring together in one volume all of the said decisions together with the appropriate headnotes. Particularly worthy of mention is an exhaustive analytical index of everything in those decisions which might be of use to those seeking guidance and having questions relating in any way to applications to Committees of Adjustment under *The Planning Act*.

Few men in the province have a broader or better background of municipal experience and knowledge of municipal law than the author of this book, who joined the *Municipal World* as an Associate Editor in 1964 and became Managing Editor in 1968. He knows through personal experience as a one time member of a Committee of Adjustment, and through questions submitted by subscribers to the *Municipal World*, the kinds of questions that arise on applications to these committees. In this volume he has provided an eminently practical source of help for those seeking answers to those and similar questions.

April 2, 1971

W. S. McKay, Q.C.

St. Thomas, Ontario

PREFACE

Almost without exception transactions affecting the use of lands now require reference to planning legislation. Frequently an application to a Committee of Adjustment, or to one of the recently created Land Severance Committees is necessary.

Such an application may relate to a proposed division of lands, or to a proposed or existing use resulting in a minor variance from or non-conformity with, the land use control by-laws of the municipality. The Committee, acting upon such an application, is required to hear evidence, make findings of fact, apply policy and render a decision.

Upon appeal from a decision of the Committee the appellant or objector finds himself before the Ontario Municipal Board, which in exercising its function under *The Planning Act* acts as an administrative tribunal. In this capacity, in addition to having the same jurisdiction as the Committee, the Board in rendering its decision has authority to uphold, set aside or vary the decision of the Committee.

The most valuable source of guidance lies in the written decisions of the Board. Those contained in this text give an insight into the manner in which the Board has exercised this part of its function over the past seven years. Although these decisions are not to be taken as establishing legal precedent some of the reasoning contained therein, when considered with the relevant facts, may be of persuasive influence.

The format of this book embodies an analysis of information included in these decisions. The contents have been arranged in six parts containing forty-seven chapters embracing the principal subjects; each chapter has a title page with a list of the key points in the chapter; the same key points are clearly set out in bold type as the heading to each decision, and finally the comprehensive index has been compiled to draw attention to both the major and minor points, and the wealth of detail.

It has been found impossible to include all decisions of the Board on this subject. Therefore the selection has been made having regard to the points of most general interest. Editing of the decisions, originally prepared for publica-

tion in the *Municipal World* magazine, has been kept to a minimum with only those matters of fact of purely local significance being deleted. Inevitably many of the decisions grouped under a particular chapter might readily have been included under one or more other chapters. No repetition has been made as the entire contents are fully classified in the index.

A number of changes have been made in the legislation under *The Planning Act* in the seven year period during which these decisions have been handed down, most recently by Statutes of Ontario, 1970. Recourse should be had to latest legislation at all times in conjunction with the matters set out in this text.

While the content of this book has been drawn from a single source, the decisions of the Ontario Municipal Board, several individuals directly and indirectly have contributed to its publication. I am indebted to my assistants (Miss) J. M. Gibson and (Mrs.) N. Canaran for their invaluable help; to (Mrs.) M. Tully my secretary for her aid in the preparation of the manuscript; to R. Piggott of Piggott Printing Company for his tireless efforts in the printing of this book; to my mentor W. Scott McKay, Q.C., for his guidance and encouragement.

April 2, 1971

MICHAEL JOHN SMITHER

St. Thomas, Ontario

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<i>bona fide</i> — in good faith	
<i>de novo</i> — once again from the beginning	20
<i>functus officio</i> — the state of an official who has completed his duties and has nothing further to do	21
<i>inter alia</i> — among other things	23, 83
<i>per se</i> — by its very own self	46

PART I

PROCEDURE
AND JURISDICTION

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Application to Committee of Adjustment — Error in — Sufficient Grounds to Dismiss Appeal — Decision Set Aside On Other Grounds — The Committee granted an application for severance of a 150 feet frontage lot by 150 feet in depth on which an existing farm dwelling was situated subject to seven conditions. An appeal was made by the owner from the first six of the seven conditions. The appellant and his wife are the owners of two farm properties on opposite sides of a highway. The one farm from which the severance was granted contains about 61½ acres and the other about 180 acres. The appellant lives on the larger farm and rents the house on the smaller.

“The appellant had lived in this house until 1960 when he moved across the road. He had rented a small three room apartment in the building and this has continued up to the present time. This is an entirely separate unit so that the building is actually a two dwelling unit house and is so rented now. The water supply for the building comes across Highway 24 from the appellant’s present residence but he is ready and willing to meet condition 7 as to well and septic tank system.

“The application to the Committee stated that the purpose for which the subject property was to be used was for a single family residence. This apparently was an error by the agent who had made the application for the owner and the owner did not know it was in the application. It was however considered by the Committee on this basis and it might well be that had the Committee known that it was intended to continue it as a two dwelling unit their decision might have been to dismiss the application. This would seem to be in itself sufficient grounds to dismiss the appeal but a more serious matter is the possibility that another house might be erected on the farm frontage if this severance is granted. It was the evidence of the Clerk of the Township that there were some 700 farm properties in the township many of whom might ask for similar severance. There have been no severances granted in the township for a year and a half.”

The Board decided that there would appear to be no hardship if the severance was refused “the owner could continue to rent the property . . . In view of this and also in view of the error in the application to the Committee” the Board decided that the decision of the Committee be set aside and the severance refused.

Kellam, Lloyd, and the Committee of Adjustment of the Township of Brantford, O.M.B. P-374-65, 17 March, 1965.

Application made by owner of an interest in the lands — Lands owned by more than one person — words “upon the application of the owner of any lands affected” considered — An appeal by an objector against a decision of the Committee granting applications for consent to the conveyance of two parcels.

“There are in fact two appeals under consideration and for the sake of convenience, this report will deal with both matters. The applicant before the Committee of Adjustment, Katherine Joan Bindner, is for the purposes of this report, by agreement of counsel, the sole owner of parcel 2, as shown on Exhibit 1, and has an undivided one-half interest in parcel 3 also shown on this exhibit. The Committee of Adjustment gave consent to the conveyance of parcel 2 and the applicant’s interest in parcel 3. It is proposed that such conveyances be made to one, Winder, the owner of a parcel of land to the east and immediately abutting parcel 2. With the exception of three parcels of land shown under the names of Winder, Turner and Hudson on Exhibit 1 and save as above mentioned the remainder of the lands sketched in this exhibit having total dimensions of 2,200 feet by 990 feet is owned by the George O. Trudell estate as to an undivided one-half interest and by the said applicant as to an undivided one-half interest. One of the executors of this estate, Catherine Baran, appeals from the decision of the Committee of Adjustment.

“The grounds of appeal emphasized by counsel for the appellant are:

- (a) Where lands are owned by more than one person, under Section 32(b) (2a) — “upon the application of the owner of any land” means that all persons must make such application to the Committee of Adjustment. Failure to apply in this manner would deprive the Committee and this Board of jurisdiction.
- (b) Since infant children have a residuary interest in the estate, the Official Guardian should have been served with notice of the application and this appeal.
- (c) There was an onus on the applicant to satisfy this Board that the requirements of Section 28(4) of *The Planning Act* were complied with and this onus was not discharged, and
- (d) consent should not be given because the requested conveyances could not result in the proper and orderly development of the municipality.

“The lands are zoned agricultural, and the Official Plan designates the lands as agricultural. There was some evidence that ultimate development of the subject lands would be for single-family residential purposes but such develop-

ment at the present time is remote. There are no services other than hydro and telephone.

"It would appear from the wording of Section 26 of *The Planning Act* that 'granting the use of or right in land' would in the circumstances covered under this section require the consent of the Committee of Adjustment. In the instant case, certainly a conveyance of parcel 2, entirely owned by the applicant, and a conveyance of an undivided one-half interest in parcel 3 would in my opinion need consent.

"Parcel 2 unless used in conjunction with parcel 1, 3 or the Winder property would be landlocked. Evidence was adduced that the estate would not or could not purchase the applicant's interest in the various parcels of land.

"Section 32(b) (4) of *The Planning Act* requires that "the Committee before hearing an application shall give notice thereof in such manner and to such persons as the Committee deems proper." Section 32(b) (14) requires that "on an appeal to the Municipal Board, the Municipal Board shall hold a hearing of which notice shall be given to the Minister, the applicant, the secretary-treasurer of the Committee and to such other persons and in such manner as the Municipal Board may determine." I am satisfied from the evidence that the required notices have been given.

"In my opinion the wording "*upon the application of the owner of any land affected*" is sufficiently broad to cover the owner of an interest in land. This conclusion is borne out by the wording of Section 26 which refers to a "*right in land*." If then there are different rights in land existing at the same time, it surely was not intended that all those possessing rights of any nature join in an application which could only affect an individual right. Anyone who is the owner of an interest in land is in my view entitled to apply to the Committee of Adjustment to dispose of such interest.

"It is further my opinion that substituting one person's interest with that of another would in no way affect the orderly development of the municipality. Those rights, privileges and restrictions applicable to a former owner would now simply be transferred to the new owner.

"I have had regard to the evidence and argument submitted with reference to Section 28(4) of *The Planning Act*, and in my view, consent should be granted as affecting parcels 2 and 3.

"In addition there should be a condition that consent as to parcel 2 is given provided that the sale to Winder respecting this parcel should be duly closed so that parcel 2 would not be isolated.

Committee decisions sustained subject to additional condition: *Baran, Catherine, and the Committee of Adjustment of the Township of London, re an application by Katherine Joan Bindner, O.M.B. P.8996-69 and P.8997-69, 29th July, 1969.*

Discovery — No Examination of Secretary-Treasurer of Committee of Adjustment for — An application on behalf of the original applicant “to examine for discovery A. J. Meredith, Secretary-Treasurer of the Committee of Adjustment of the Township of West Gwillimbury and for the production of documents.”

“Mr. McClocklin applied to the Committee of Adjustment for three severances. His applications were dismissed and he now appeals to the Board and to assist him in his appeal he seeks discovery and the production of documents.

“In my opinion the application should be dismissed. The Committee of Adjustment is a semi-judicial body and I know of no authority which would permit the examination for discovery of the secretary-treasurer of such a body.

“Similarly I do not think a general order for the production of documents should be made. If the appellant asked for the production of specific documents and this was refused, then I think the Board on application should consider whether such specific documents should be produced.”

Application dismissed: *McClocklin, James, and the Committee of Adjustment of the Township of West Gwillimbury, O.M.B. P.9571-69, P.9572-69 and P.9573-69, 7th August, 1969.*

Failure to give notice to all parties — Gravel Pit — No consideration given to matters mentioned in section 28(4) — “The application for consent to convey the subject parcel of land having an area of 5 acres was made by the owner, Joseph Couckuyt, now deceased, on April 4, 1966, who was represented at the hearing before the Committee of Adjustment on June 7, 1966, by an insurance agent, William J. Amos, as his agent. It is indicated on the application form that it was *intended to use the parcel proposed to be conveyed as a gravel pit.*

“The only reason given by the Committee for granting the application was that “there were no local objections.” There is *no indication* in the records of the Committee filed with this Board *that any consideration was given to the matters mentioned in Section 28(4) of The Planning Act*. The Committee granted consent “subject to any restrictions pertaining to gravel pits that may be contained in the local municipal by-laws.” What good lay in attaching such a condition is nebulous because as far as this Board could ascertain there are no regulations governing gravel pits in this municipality, no official plan and no restricted area by-law worthy of the name to provide protection to neighbouring properties from gravel pits or other obnoxious uses.

“The decision of the Committee was appealed by The Board of Trustees of the Roman Catholic Separate School Number 18 on June 9, 1966, and the appeal was heard by this Board on November 9, 1966. Although notice of the hearing had been given to them, neither the applicant nor Mr. Amos attended that hearing. The school board was represented and opposed the conveyance on the grounds that a gravel pit operation because of truck traffic, dust and noise would be a safety hazard for children attending its school on the adjoining property and a disturbing factor during classroom hours. That hearing was also attended by R. D. Ritchie, the township clerk, and it appears from the record and the decision of the Board dated November 28, 1966, that the Board was then advised that an official plan had been prepared and forwarded to the Minister for approval and that an implementing zoning by-law was being prepared. As a result of such advice the Board’s decision was that the matter be adjourned for six months to give the township “reasonable time to complete its zoning by-law” and that the matter could be brought on again after the six month period upon the application of either party.

“Subsequent to that decision, no action was taken either by the original applicant, Mr. Couckuyt, or by the school board to have the matter brought on again. The reasons for the apparent loss of interest of both parties are not known.

“On February 27, 1969, the Board received a letter dated February 26, 1969, from Mr. Amos who had acted as agent for the applicant at the hearing before the Committee of Adjustment in June, 1966, advising that Mr. Couckuyt was deceased and his family wished to have the adjourned hearing resumed, and also that Separate School Number 18 was now closed. It appears that the said school board has been succeeded by a county combined separate school board.

“It appears from the records that notice of the new hearing to be held May 20, 1969, was given to Mr. Amos but he did not appear before us on that date.

The records do not indicate that notice was given to the county board or to the executors or administrator of the estate of the deceased Joseph Couckuyt. Cyril Couckuyt, the son of the deceased, appeared at this hearing but could offer no evidence that was useful to the Board, and in fact was not aware that evidence should be given with respect to the matters mentioned in Section 28(4) of *The Planning Act*.

“No person attended this hearing on behalf of the township and the Board is unaware what progress, if any, has been made by the council in providing an official plan and a zoning by-law for the protection of its inhabitants. There is some doubt that an official plan has ever been adopted by the council and submitted to the Minister for approval.

“In view of the lack of notice to persons having an interest in the matter, namely, the legal administrator of the estate of the deceased, Joseph Couckuyt, and the successor to the former school board, and in view of the fact that there have been changes in ownership of some of the lands in the neighbourhood since 1966 and the new owners should also receive notice, it is our decision that this matter be adjourned again until the Board has considered and determined the persons entitled to notice and that a date for hearing be then fixed and notice given to those persons by the Board.

Matter adjourned: *Roman Catholic Separate School for School Section Number 18, and the Committee of Adjustment of the Township of Bosanquet re an application by Joseph Couckuyt, O.M.B. P-1734-66, 18th June, 1969.*

Failure To Give Statutory Notice — The appellant had not complied with the statutory requirements for notice of hearing. He had not given notice to anyone.

Appeal dismissed: *Newfield, Albert, and the Committee of Adjustment for the Township of North York, O.M.B. N-9989-65, 3 November, 1965.*

Notice of Hearing — Failure to Comply With Board's Direction — This appeal against the decision of the Committee granting, in part, an application, came on for hearing on March 14, 1966, and was adjourned on account of the “failure of counsel for the appellant to send out notice of the hearing in accordance with the Board's directions dated January 12, 1966.”

“Directions in respect of this hearing were issued by the Board on March 28, 1966. Those directions, including the requirement of Section 32b (14) of *The Planning Act* that notice be given to the Minister, have not been complied with. The only explanation given is that the matter was overlooked.”

Appeal dismissed: *Robb, Roscoe, and the Committee of Adjustment of the City of London, O.M.B. P-525-65, 17 May, 1965.*

Notice by Board of Control — Not ratified by Council within time limited for Appeal — An appeal by the Borough against the decision of the Committee granting upon conditions an application for consent for severance.

“In this case the following letter was transmitted by the Clerk of the Borough of Scarborough to this Board under date of March 6, 1969, and received March 7, 1969.

March 6, 1969

The Secretary,
The Ontario Municipal Board,
145 Queen Street West,
TORONTO 1, Ontario.

Dear Sir:

The Scarborough Board of Control at its last regular meeting directed that I forward this request to you to register an appeal on behalf of the Borough of Scarborough against the Scarborough Committee of Adjustment decision relating to their consent No. 998 granted on February 18, 1969, to Ru-Lor-Developments Ltd. for severance of their property on the west side of Brimley Road into four separate single family building lots.

Yours truly,
C. A. TRIPP,
Clerk.

c.c. Mr. D. F. Easton, Secretary-Treasurer, Scarborough Committee of Adjustment

Mr. K. H. MacDiarmid, Borough Solicitor (with copy of Committee of Adjustment decision)”

“Ru-Lor-Development Limited, the company which obtained the consent in question, now moves to have the appeal dismissed on the ground that it purports to be an appeal on behalf of the Borough of Scarborough but that the action of the Board of Control instructing the appeal was not ratified by council within the time limited for appeal and therefore the appeal is not a valid one on behalf of the Borough.

“The powers of a Board of Control are set forth in Section 206 of *The Municipal Act*. Counsel agree that the Board of Control is not given the

power under that section to launch the appeal in question on behalf of the Borough. Counsel were unable to refer me to other statutory provisions which might give such a power nor have I been able to find any such provision.

“Council agreed that the last date for appeal was March 7, 1969, that the Board of Control authorized the appeal on March 5, 1969, and that council did not ratify this act of the Board until March 10, 1969, which as indicated is after the expiry of the time limited by statute for appeal. In the circumstances I find that this appeal purporting to be on behalf of the Borough was not authorized by the council within the time specified by the statute, that the notices therefore are invalid”

Appeal dismissed: Scarborough, Borough of, and the Committee of Adjustment of the Borough of Scarborough re an application by Ru-Lor-Development Limited, O.M.B. P-8572-69, 1st May, 1969.

Notice by Development Committee — No Power to act on behalf of Town — An appeal by the municipal corporation against a decision of the Committee granting an application for severance.

“On July 7, 1969, the Committee of Adjustment of the Town of Burlington granted an application by Katherine M. Bates for consent to the severance of a parcel of land being part of Lot 14 in Concession VII N.S., formerly in the Township of Nelson and now in the Town of Burlington. It is common ground that the last date for appeal was July 25, 1969.

On July 17, 1969, the Assistant to the Town Clerk wrote a letter as follows:

“Please be advised that the Development Committee of the Town of Burlington at its meeting on Tuesday, July 15th last, resolved that the Corporation of the Town of Burlington appeal the decision of the Committee of Adjustment granting a land severance to Katherine M. Bates, under their file B. 1045, on July 7th, 1969.

“Due to the fact that we do not have a meeting of Council until July 28th next, which is three days after the last date of appeal of this decision, please accept this letter as our formal objection. When Council ratifies this resolution at their next meeting, I will forward to you a Certified Copy of the resolution.”

“On July 28, 1969, three days after the statutory period for appeal had expired, the council of the town purported to ratify the above notice.

“In my opinion the Development Committee of the council has no power to act on behalf of the town and is not a person who has an interest in the matter

within the meaning of Section 32b, subsection (12) of *The Planning Act*. For this reason I find the appeal fails and I report and recommend that the same be dismissed.

“It may well be that a solicitor under a general retainer would have power to appeal but the notice in this case was not given by the solicitor.

Counsel for Mrs. Bates raised another ground of lack of status of the appellant since the town had not filed with the Secretary-Treasurer of the Committee a written request for notice of the decision at or before the hearing. I think in this regard the true import of a previous decision of this Board in *Re William Ollin vs. The Bank of Nova Scotia* (Board File N-7312) may have been misunderstood but in view of what I have said above there is no need to dwell on this further point.”

Appeal dismissed: *Burlington, the Town of, and the Committee of Adjustment of the Town of Burlington, re an application by Katherine M. Bates, O.M.B. P-9997-69, 26th January, 1970.*

Notice — Date of Postmark Considered — Late Appeal — Matter not Properly before Board — An appeal by the municipal corporation against a decision of the Committee.

“At the opening an objection was raised in which it was contended that the matter was not properly before the Board because of a defect in the giving of notice.

“The appropriate section of *The Planning Act* is section 32b (10) and (12). Notice in accordance with section 32b (10) of the Act was given by the secretary-treasurer of the Committee of Adjustment on August 12, 1968. Section 32b (12) states that any person who has an interest in the matter may appeal against the decision of the Committee of Adjustment by sending notice of appeal by registered mail to the secretary of the Municipal Board and to the secretary-treasurer of the Committee of Adjustment within 14 days after the sending of notice under subsection (10). Notice of appeal to the secretary of the Municipal Board was by a letter bearing the date of August 26, 1968, which was sent by registered mail and the postmark at North Bay bears the date of August 27, 1968. The required notice to the secretary-treasurer of the Committee of Adjustment was not sent by registered mail. A copy of the letter which was sent to the Municipal Board was handed to the secretary-treasurer in the City Hall and a copy of this is filed as Exhibit 3 in these proceedings and shows that the secretary-treasurer received it on August 27, 1968.

“On the evidence it would not appear that notice of appeal was sent within fourteen days after the sending of notice under subsection (10) and for this reason I recommend that the appeal be dismissed.”

Appeal dismissed: *North Bay, the City of, and the Committee of Adjustment of the City of North Bay, re application by Frank C. Ringler and Eunice I. Ringler, O.M.B. P-6887-68, 24th January, 1969.*

No Jurisdiction to hear late appeal — Failure to request copy of decision of Committee — The following decision was delivered in response to a motion for direction to determine whether the Board had jurisdiction to hear an appeal from a decision of the Committee granting an application by Manning Baker.

A Mr. H. Findlay appeared before the Committee of Adjustment on behalf of himself and some 29 residents of the area to oppose an application before the Committee.

Mr. Findlay “unfortunately did not request in writing that he should be sent a copy of the decision of the Committee of Adjustment.”

“The acting Secretary-Treasurer of the Committee of Adjustment sent out notice of the decision on the 21st day of June, 1968, which stated the last day for giving notice of appeal was July 5th, 1968.

“Since Mr. Findlay had not signed a written request for a copy of the decision, no copy was sent to him. After having heard of the decision he appealed to this Board by letter dated the 15th day of July, 1968, which was apparently mailed on the 16th day of July, 1968.

“Subsection 10 and subsection 12 of section 32(b) of *The Planning Act* are as follows:

“The secretary-treasurer shall send by mail one copy of the decision, certified by him, to the Minister, to the applicant and to each person who appeared in person or by counsel at the hearing and who filed with the secretary-treasurer a written request for notice of the decision, together with a notice of the last day for appealing to the Municipal Board, 1962-63, c. 105, s. 12 (2); 1966, c. 116, s. 5(3).”

(12) “The applicant, the Minister or any other person who has an interest in the matter may appeal to the Municipal Board against the decision of the

Committee by sending notice of appeal by registered mail to the secretary of the Municipal Board and to the secretary-treasurer of the Committee of Adjustment, within fourteen days after the sending of the notice under subsection 10."

"J. H. Boland appeared on instructions from the Borough Council to support the position of Mr. Findlay that the Board had jurisdiction to hear the appeal.

"The Board decided that, while the result is unfortunate there would seem no doubt that under these circumstances the Board is without jurisdiction to hear this appeal. *Stringer v. Nyman* 1956 O.W.N. 182."

Appeal dismissed: *Findlay, Henry, and others and the Committee of Adjustment of the Borough of York, re an application by Manning Baker, O.M.B. P-6639-68, 7th October, 1968.*

Settlement between parties — Hearing before Board — Not subject to — Not Adversary Proceedings — Appeals by objectors against decisions of the Committee, granting upon conditions certain applications one of which was for the "severance of a 71 foot lot from the recently acquired residence of the applicant and the other for variances with respect to the resulting lot width and area and the northerly side yard of a proposed new dwelling. A third application with respect to side yard variance on the parcel remaining was approved and was not the subject of the appeal."

"The approval given with respect to lot width and area variances was not appealed and is not therefore before the Board except insofar as it forms part of the application. A third decision which must be concluded as relating in part to two of the applications reads as follows:

That the application be granted as applied for, subject to the applicant entering into an agreement with the Corporation under Schedule "A" to By-law 3801 for the parcel separated, the agreement to include the following additional clauses:

- (a) the said parcel to be used for residential purposes only; and
- (b) that the side yards of any dwelling erected thereon be established at a minimum of four feet on the northerly side and ten feet on the southerly side."

"Subsequently there was presented to the Board what purports to be a consent between the owner and the appellants whereby condition (a) shall be amended to read 'the said premises to be used only for one single family detached dwelling.'

“Since not even the Committee has power to amend its decision and since, further, these are not adversary proceedings and not therefore the subject of any settlement, the consent can be of no effect. However at the hearing before me no objectors appeared in person and counsel for the appellants expressed a willingness to withdraw objection to the decision insofar as it relates to side yard requirement and the applicant expressed complete willingness to have clause (a) thus amended. There was no assurance from counsel for the corporation that an agreement, such as that referred to, would be entered into but at least there was no objection to the condition and it should perhaps therefore be accepted as an undertaking.”

Committee decision amended as indicated with respect to clause (a) and otherwise confirmed: *Nielsen, John Burnett, and Margaret Nielsen and the Committee of Adjustment of the Town of Burlington re applications by Ethel A. MacKenzie and James W. MacKenzie, O.M.B. R-593-69 and R-594-69, 12th March, 1970.*

Section 28 — Onus on Applicant — to adduce evidence with respect to —
An appeal by the original applicant against the decision of the Committee dismissing an application for a severance. The appellant purchased the subject and adjoining lands comprising 43 acres and proposes to divide this property into five parcels (Exhibit 1).

“This property is situate at the intersection of two roads and is about four miles from the nearest hamlet. There are no abutting services and no evidence was adduced as to location or availability of schools. The lands are apparently unzoned. In the general area most of the land holdings are hobby-farms comprising 25-50 acres each.

“The evidence adduced on behalf of the appellant indicated that about two-thirds of parcel 1 on Exhibit 1 is ‘swampy’ which the witness interprets to mean impassable. It appears that only about one acre of this parcel can be used for building purposes. No evidence was adduced on behalf of the appellant to indicate that this swampy land would be capable of carrying a satisfactory septic tank installation which presumably would be the only means of sewage disposal.

“The Committee of Adjustment was of the opinion that the parcel sought to be severed was too swampy for residential building and on the evidence I am inclined to agree.

“I am of the opinion that it is incumbent upon a person who seeks a consent to sever land to adduce evidence to show that the requirements of Section

28(4) of *The Planning Act of Ontario* will be satisfied and there was almost a complete dearth of such evidence in this appeal. This being so I am of the opinion I do not have enough information to decide whether or not the consent should be granted.

“In addition it is clear from a perusal of Exhibit 1 that the appellant intends to divide his land holding into 5 parcels. In a rural municipality where no services are available development by consent severances is contrary to the very basic principles of good planning and should not be countenanced unless the provisions of Section 28(4) have been complied with.”

Appeal dismissed: *Zuker, Alan M., and the Committee of Adjustment of the Township of Erin, O.M.B. P-7721-68, 2nd June, 1969.*

Unwarranted intrusion upon the rights of owners of adjoining property — Committee reasons not refuted by appellant — Fifth application on same property — An appeal by the original applicant against the decision of the Committee dismissing an application for permission to convey portion of a lot.

“The reasons for denying the application were outlined by the Committee as follows:

“The reason for the Committee’s decision to refuse this application was that they felt such a separation was completely out of character with the surrounding properties, and unfair to the neighbours.”

The Committee members also felt that the necessary set back of the proposed new dwelling would not be appropriate, and would be objectionable, with good cause, to the adjoining neighbours.

“Furthermore, a considerable variance would have to be granted with respect to the existing dwelling on the property, with regard to its rear yard, which would be only slightly over 6’ deep.”

The proposed lot is presently part of the parcel occupied by a dwelling. Evidence was given by an architect’s assistant, supported by site plans, as to the value and quality of the residence proposed to be erected though there was no assurance as to the type or location.

“Martin Dinkin, husband of the appellant, supported the appeal as being a reasonable disposition of vacant land and Philip Dinkus, a real estate salesman, purported to conclude that a building erected in conformity with the site plan would, with land, have a value in excess of \$50,000. *None of these witnesses dealt specifically with the Committee’s reasons and the only one*

questioned in that regard by the Board, namely Mr. Kirk, said he had given this aspect no consideration.”

Appearances in objection were made by the owners of the house opposite, and the house immediately to the east.

“This property is not and never has been occupied by the applicant who purchased it five years ago. I feel that *no real attempt has been made to refute the conclusions of the Committee not only with respect to the proposed new parcel but also with respect to the inadequate rear yard which will be created for the existing house, for which variance no application has apparently yet been made.* I therefore recommend that the appeal be dismissed.

“I feel obliged to point out that this is the fifth application that has been made either to the Planning Board or the Committee of Adjustment on this matter since 1956 which I cannot stress too strongly as being an unwarranted intrusion upon the rights of adjoining owners and an item of expense and inconvenience to which I believe they should not be put. In fairness to the present owner, however, I note that this is only the second application launched by her.”

Appeal dismissed: *Dinkin, Sylvia, and the Committee of Adjustment of the Borough of Etobicoke, O.M.B. P-4151, 27th October, 1967.*

Variance — Motion before the Board to hear Argument on Jurisdiction —

Upon application made to the Board by William Ollin, “by way of appeal against a decision of the Committee of Adjustment of the Town of Milton dated the 24th day of March, 1964, whereby the Committee granted an application by the Bank of Nova Scotia for a variance from the provisions of By-law 1130 of the Town of Milton, to permit alterations to the existing building on Part Lots 4-3-11-13-15 and part of Alley #2, Gardner’s Survey, known as 242-244 Main Street East; in the presence of counsel for the Bank of Nova Scotia, and of counsel for the appellant, and the Board having heard the submissions of counsel aforesaid,

“The Board orders under and in pursuance of the legislation above referred to that this appeal be and the same is hereby dismissed.”

Ollin, William, and the Committee of Adjustment of the Town of Milton, O.M.B. N-7312-64, 15th May, 1964.

Chapter II

Jurisdiction

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Committee without Jurisdiction to Legislate — Hearing de novo — An appeal by the original applicant against the decision of the Committee dismissing an application for a variance to permit the erection of a single family building on a lot of 4,416 square feet and the maintenance of an existing dwelling on a lot of 5,742 square feet. The by-law requirement is 6,000 square feet minimum lot area.

“The appellant explained that he considered much of the opposition to his application was due to a misunderstanding of his application. This is not of concern to the Board as this is a hearing *de novo* and the matter will be determined on the merits of the case as indicated by the evidence before it.”

“The appellant’s property is situate at the corner of Sheppard Avenue and Hycrest Road. The surrounding development on Sheppard Avenue does not appear to have completely developed in conformity to the zoning by-law requirements. The properties on Hycrest Road have been developed to a higher standard respecting frontage and area than that required by the zoning by-law.”

“There was some indication that Sheppard Avenue is to be widened in the near future which will result in a 7 foot strip depth reduction on the lands on both sides of Sheppard Avenue.”

“After a careful examination of the evidence I am of the opinion that the appeal must fail. The standards that are set out in the by-law are not being maintained. It is not a minor variance in the circumstances. It is not the jurisdiction of the Committee of Adjustment and this Board, in its turn, to legislate. That is the function of the municipal council. This is not a unique situation. If in its wisdom a lesser standard should apply to the properties fronting on Sheppard then council should act accordingly.”

Appeal dismissed: *Vidos, Rudolph, and the Committee of Adjustment of the Borough of North York, O.M.B. P-5881-68, 12th July, 1968.*

Committee — No hearing before — Board without jurisdiction — An appeal by the original applicant against a decision of the Committee refusing an application for permission to use a garage for the purpose of storing racing cars and parts. The Committee refused the application and gave as their reasons:

“ ‘Permission is refused on the grounds that neither did the applicant nor her agent or representative appear at the hearing of the application to present information to the Committee.’ ”

“From the evidence it would seem that the Committee did not hear the application as required by *The Planning Act*, section 32b (6). For this reason this matter is not properly before this Board as there is no decision of the Committee made after a hearing of the application.”

Appeal denied: *Tountas, Helen, and the Committee of Adjustment of the City of London, O.M.B. R-711-69, 31st March, 1970.*

Committee functus officio after decision given — An appeal by an adjacent property owner against a decision of the Committee, granting upon a condition an application which would “permit the replacement of an existing side porch with an enclosed masonry porch that will maintain and continue the easterly side yard set-back of 2 feet 7 inches, whereas the by-law requires a minimum side yard set-back of four feet.”

“At the outset of the hearing, counsel for the appellant made a motion that the appeal should be allowed because a condition imposed to the approval by the Committee of Adjustment was impossible to fulfil, and in the alternative the hearing should be adjourned in view of the action taken by the Committee subsequent to the appeal being commenced to this Board.

“The Committee of Adjustment approved the application subject to the condition that the surface and roof drainage be connected to the storm sewer system. This decision was appealed. Subsequently it was ascertained that there were no storm sewers available to service the property and the Committee seemed to change their decision eliminating this condition without issuing any notice thereof.

“*The Board is of the opinion that once the Committee of Adjustment has given its decision it is functus officio and any further action on its part after appeal is without validity. The Board will completely ignore any action subsequently and deal with the appeal from the decision as originally made on July 30th, 1969. The motions for dismissal or adjournment were accordingly dismissed.*”

The Board then considered the particular facts and allowed the appeal insofar as the condition was deleted and the application approved without any conditions being imposed.

Appeal allowed as above: *Stone, Ida K., and the Committee of Adjustment of the Borough of North York, re an application by David G. C. Andrus, O.M.B. R-345-69, 4th March, 1970.*

Jurisdiction of Ontario Municipal Board to alter terms of application or merely to determine existence of valid non-conforming use — An appeal by the original applicant against a refusal by the Committee to grant his application which asked for “confirmation of non-conforming use of dwelling house as duplex.”

“The application was supported by counsel on behalf of the applicant and also by counsel on behalf of the city.

“Apparently when the applicant bought the property in the spring of 1962 it was being used as a two family dwelling. It would also appear that the applicant rented two floors and moved into the basement himself. It may well be at this date it became a triplex. Subsequently to the passing of the zoning by-law separate stairs were erected to the attic and a garage was added.

“The city is at present taking proceedings against the applicant for breach of the zoning by-laws. The city supported the application on the basis that conditions should be added; particularly that the premises should only be used as a duplex.

“An immediate neighbor appeared and objected to the application.

“It would seem clear that this Board must deal with the application as made to the Committee of Adjustment and has no jurisdiction to alter the terms of the application — *Re Colicchia Construction Limited and Schmidt* 1968 2 O.R. 806.

“In the Board’s opinion it has no jurisdiction merely to determine that the applicant had a valid non-conforming use. This would seem to be a judicial determination which is beyond the jurisdiction of the Board — *Quance vs Thomas A. Ivey & Sons, Limited* 1950 O.R. 397; *City of Toronto vs Olympia Edward Recreational Club Limited*, 1955 S.C.R. 454.

“The evidence would suggest that this property may well have been used as a triplex at the time the by-law was passed and that an application would be tenable to change the use from a triplex to a duplex under Section 32(b) 2(a) (ii) of *The Planning Act*. It was also suggested that the garage which was erected after the by-law was passed did not comply with the sideyard requirements of the by-law in which case there might be a possibility of an application for a minor variance on this point.

“Neither of these points were included in the application to the Committee of Adjustment and the Board is therefore unable to deal with them.”

Appeal dismissed: *Bischoff, Paul, and the Committee of Adjustment for the City of Kitchener*, O.M.B. P-6427-68, 31st December, 1968.

Jurisdiction, Lack of — Appeal dismissed — An appeal by the original applicant against a decision of the Committee dismissing an application for a minor variance.

“The subject lands upon which is situated a building used for a residential use (a legal non-conforming use) were purchased by the appellants subsequent to the passage of a land use by-law which zoned said lands for an industrial use, which *inter alia*, allows the operation of a retail gasoline outlet as a permitted use.

“The appellants propose to erect a building which will be used in connection with a retail gasoline outlet on this property and part of the existing residential building may be used in connection with this business operation.

“Counsel for the appellants made a preliminary objection that the Committee of Adjustment in dealing with the application before it had no jurisdiction to hear same on the ground that the relief sought did not involve a legal non-conforming use and therefore subsection 2 of section 32b of *The Planning Act* did not apply. Such a motion on behalf of the appellants raises the question in my mind why the application was made to the Committee of Adjustment in the first place, if such is now the attitude of the appellants. Nevertheless I am of the opinion that such a motion should be successful. From the agreed statement of fact concurred in by counsel, it is obvious that the appellants propose not to seek an extension of a legal non-conforming use but to inject a new use, that is, an industrial use permitted under the zoning by-law. Therefore, it seems clear to me that no permission of any external authority is required to implement the intention of the appellants.

“The Committee of Adjustment dismissed the application but not on the ground that the application was unnecessary for reasons stated aforesaid. I am of the opinion that the provisions of subsection 2 of section 32b of *The Planning Act* do not apply and subsequently there being no jurisdiction in the Committee of Adjustment for hearing such an application, I would recommend that this appeal be dismissed and the decision of the Committee of Adjustment sustained but on the grounds of lack of jurisdiction set out aforesaid.”

Appeal dismissed: Shoychet, Sydney, Joseph Haas and Abraham Waisglass, and the Committee of Adjustment of the Township of Pickering, O.M.B. P-7787-68, 15th April, 1969.

Jurisdiction of Committee of Adjustment and Ontario Municipal Board — Subdivision of Parcel Under Consideration by Minister — An appeal by an objector, supported by the Borough of Scarborough, from a decision of the

Committee granting upon conditions an application for a severance of a parcel of land having a frontage of 560.99 feet and a depth of 403.02 feet, which forms part of a proposed plan of subdivision now under consideration by the Minister. “There is evidence that favourable recommendation has been made to the Minister to approve the application so made, subject to certain conditions.”

“We have considered carefully the decision of the Committee of Adjustment and the circumstances surrounding this application and we are of the opinion that the appeal ought to be allowed.

“The Committee of Adjustment and indeed this Board when hearing an appeal from that body must find its jurisdiction under the relevant provisions of *The Planning Act*, R.S.O. 1960, c. 296. The provisions are as follows:

Subsection 2a of Section 32b:

“In addition to its powers under subsections 1 and 2, the Committee, upon the application of the owner of any land affected by a by-law passed under section 26 or a predecessor of such section or any person authorized in writing by such owner, may, notwithstanding any other Act, consent to a conveyance, mortgage, charge or agreement that is not authorized under subsection 1 or 3 of section 26, provided that the Committee is satisfied that a plan of subdivision of the land described in the application approved under section 28 is not necessary for the proper and orderly development of the municipality. 1964, c. 90, s. 6(1).”

Section 9a of Section 32b:

“The Committee, in determining whether a consent is to be given under subsection 2a, shall have regard to the matters that are to be had regard to under subsection 4 of section 28 and has the same powers with respect to a consent as the Minister has to an approval of a plan of subdivision under subsections 5 and 8 of section 28, and shall require that any or all conditions imposed be fulfilled prior to the granting of a consent, and, in exercising its powers under subsections 5 and 8 of section 28, the reference to the Minister in such subsections 5 and 8 shall be deemed to be a reference to the Committee. 1966, c. 116, s. 5(2) part; 1967, c. 75, s. 8(1).”

Subsection 1(a) and (e) of Section 26:

“(a) the land is described in accordance with and is within a registered plan of subdivision; *or*

(e) the consent,

- (i) of the Committee of Adjustment of the municipality under subsection 2a of section 32b, unless the area was designated by order of the Minister under clause b of subsection 1 of section 27, *or*
 - (ii) where there is no Committee of Adjustment with approved rules of procedure or where the area was designated by order of the Minister under clause b of subsection 1 of section 27, of the Minister,
- is to convey, mortgage, charge or enter into an agreement with respect to the land. 1960-61, c. 76, s. 1(1), part; 1966, c. 116, s. 2 (1, 2)."

"From a study of the above sections it is quite obvious that the Committee of Adjustment and the Board in this matter is the *alter ego* of the Minister in such an application; it follows that once the Minister occupies the field then the Committee of Adjustment and this Board ought not to entertain an application for consent for severance of the same land.

"Furthermore, one must inescapably conclude that Section 26(1) (a) and (e) are alternatives; the language is clear, these alternatives are open to a land owner and the respondent has chosen the first alternative.

"We are fortified in our view by the decision of this Board in File P-3417-67 where Mr. A. L. McCrae in a report to this Board said:"

"One does not have to speculate to realize what chaos would result if a precedent were established whereby subdivisions awaiting the Minister's approval were being dismembered in the interval. This fact alone is good and sufficient reason for dismissal.

"While there is apparently nothing in the Act which excludes such variances being granted despite the existence of draft plans the adoption of such a procedure would make redundant one of the main purposes of *The Planning Act* which is to ensure the orderly development of a municipality based upon proper plans of subdivision served by efficient and modern municipal services."

Appeal allowed: *Dempster, Alan, and the Committee of Adjustment of the Borough of Scarborough, O.M.B. P-4012-67, 28th November, 1967. Board File P-3417-67.*

Jurisdiction of the Board to consider Application in Accordance with intent — Encroachment upon problems of the individual rather than matters of public concern — An appeal by the Borough against a decision of the Commit-

tee granting upon conditions an application for a consent to the conveyance of a number of parcels.

“The subject parcel is located on the south side of Lawrence Avenue, east of Pharmacy Avenue and west of Wexford Boulevard. The dimensions of the parcel and the proposed severances are more particularly shown on surveyor’s plan filed as Exhibit No. 2. The property has a total frontage of 200 feet by a depth of 148 feet. The application would appear on the surface to be an application for the severance of 31 separate parcels each having approximately 19 feet in width as shown on the plan of survey already referred to as Exhibit No. 2.

“The parcel is zoned for highway commercial and developed as a block of ten stores with apartments above in conformity with the existing zoning by-laws (Exhibit No. 7) and recently developed in accordance with a site plan (Exhibit 3). Photographs filed indicate the nature of the development as being a row of stores of similar architecturally pleasing facade and signs, with a single access to Lawrence, and with uninterrupted access across its parking area.

“It is proposed to divided up the parcel into 10 separate units from front to rear so that there could be individual ownership of the units as well the provision for a sidewalk on both sides of the said parcel. Although the application indicates a severance into 31 separate units it is obvious, and the Board accepts the evidence in this respect, that it is the intent to have only 10 separate units plus parts 1 and 32 formed Exhibit No. 2 and the decision of the Committee of Adjustment indicates approval of 31 severances. In view of the reasonable explanation offered, i.e., to facilitate the description of the parcels which were subject to mutual rights, the Board is of the opinion that the Committee of Adjustment as well as any person that might be affected were in no way misled as to the intent of the application. The Board is of the opinion, that since it has the same jurisdiction as the Committee of Adjustment, notwithstanding the apparent error of description, that it has the jurisdiction to consider it according to the intent of the application.

“There was filed by the municipality a study of subdivision of shopping centres which was filed as Exhibit No. 1. This was prepared by the Scarborough Planning Board and presented to council with respect to the problem encountered by the creation of strip shopping centres. This report indicates that it is undesirable for the development under separate ownerships of such a retail shopping centre because of:

- (1) the possible physical separation of parking lots by fencing or curbing;
- (2) the differing grades of parking lots and rear lanes;

- (3) the lack of maintenance of parking lots, signs, curbing, rear yards, etc.;
- (4) the separate access to each unit or unrestricted access, and
- (5) the appearance — the multiplicity of sign type and building designs.

“On page 5 of the report the Planning Board draws certain conclusions in part which are as follows: “Shopping centres or strip commercial developments examined all exist in multiple ownerships. It would be erroneous to assume that some of the conditions do not exist on shopping centres developed and contained in one ownership, nor that multiple ownership commercial developments are all characterized by the conditions illustrated.

“It is however, self-evident that the probability is remote of achieving harmony in design, architecture, maintenance and efficiency of commercial developments with a multiplicity of owners, with divergent views and opinions. Experience in the borough substantiates this axiom.”

“It then goes on to suggest means whereby the problem might be surmounted and it states that the Committee of Adjustment should be made aware of the problems being created and to thoroughly examine the need for granting of further such consents. On page 7 the recommendations indicate with respect to future multi-separate ownerships of commercial developments the following recommendations:

- “(1) The Committee of Adjustment be made aware of the situations being created in granting such consents, and in consideration of future applications weigh the problems being created against the need to grant such consents.
- (2) Council and Planning Board in the exercise of zoning powers to have regard for compatibility of contiguous land uses as to harmony in the parking lots and service lanes layout.
- (3) The borough to investigate the feasibility of the use of *The Condominium Act 1967* or new legislation or action whereby responsibility for the maintenance of common areas is mutually vested in all the owners of the shopping centre.”

“The only additional objections expressed on behalf of the municipality were related to the problem of servicing the shopping centre and of the accompanying municipal administrative problems of charging for certain services, or enforcing responsibility on a recalcitrant owner.

“The evidence indicates that the present development is satisfactory in all respects at this time but that the municipality is of the opinion that there are no means to ensure that it will remain so. They submitted a half-hearted

suggestion that a plan of subdivision should be adopted to effect such a scheme, if such development was deemed desirable at all.

“Under the existing legislation the municipality could make more effort to ensure that the standards they desire could be obtained. A more comprehensive zoning by-law could set out the regulations to effect the proper development and enforcement of existing by-laws and would go a long way in correcting any possible abuse. In many respects the municipality appears to desire to encroach upon the problems of the individual rather than deal with those matters that are strictly of a public concern. If indeed it was appropriate for the municipality to be concerned about such problems then the municipality could take steps to ensure that these things could be properly considered within the limitations of its jurisdiction.

“Upon the basis of the evidence submitted the Board questions whether the municipality would give greater consideration to the proposal if the application was by way of plan of subdivision, except for possibly the requirement of a one foot reserve which is a condition that can be extracted in the subject application. The Board is of the opinion that an additional condition should be added requiring that there be a deed to the municipality of a one foot reserve across the entire frontage save for the 25 foot access presently existing. The conditions of the Committee of Adjustment already require provision for mutual rights-of-way and access for ingress and egress and provision for continued maintenance to be registered on title. Such an agreement should clearly set out the provision with respect to the rights and liabilities between the parties.

“The appeal will therefore be allowed to the extent that the decision will be varied so that the application for consent to conveyance shall be for 12 parcels comprising parcel 1, parcels 2, 3 and 4, parcels 5, 6, and 7, parcels 8, 9 and 10, parcels 11, 12 and 13, parcels 14, 15 and 16, parcels 17, 18 and 19, parcels 20, 21 and 22, parcels 23, 24 and 25, parcels 26, 27 and 28, parcels 29, 30 and 31, and parcel 32 upon the following conditions:

- (1) Decision will lapse on February 8th, 1970 unless within this period of time the land in respect of which the consent was granted was sold, mortgaged, charged or otherwise conveyed pursuant to the provisions of Section 26(3a) *The Planning Act 1960*.
- (2) Conveyance to the borough of a one foot reserve of the frontage save for the existing 25 foot access.
- (3) All conveyances to be subject to provision for the mutual rights-of-way clearly indicating the respective rights and liability and providing for continued maintenance.

Appeal allowed in part — Decision varied: *Scarborough, Borough of, and the Committee of Adjustment of the Borough of Scarborough re an application by Dralon Investments Limited and South Park Investments Limited, O.M.B. P-8222-69, 8th May, 1969.*

Minister and Subsequent Decision of the Board — Attempt to Circumvent Conditions imposed by — Summer Cottage Subdivision — Appeals by the Minister of Municipal Affairs (Acting) against decisions of the Committee granting applications by a land development company concerning *two parcels of land which lie within a draft plan of subdivision which has been the subject of rather prolonged negotiation between the company and the Minister.*

“The company had proposed a very extensive summer cottage subdivision frontage on the Georgian Bay but with many internal lots which lack such frontage. Some 17 lots on the Bay frontage were approved for registration but approval of the remainder was withheld pending compliance with several conditions which included provision of piped water and filling of the lots with material of a suitable quality and quantity for septic tank installations.

“The company appealed the conditions to this Board and that appeal was heard by Mr. Roberts and myself on June 8, 1967. The decision wherein the Board declined to interfere with the conditions laid down by the Minister may be found in File P-3287-67.”

“The lots that were the subject of the applications to the Committee of Adjustment lie within the portion of the earlier draft plan which was not approved and, lacking any evidence to the contrary, I can only assume *that the applicant company has sought to circumvent the conditions imposed by the Minister and the subsequent decision of this Board, by its application to the Committee of Adjustment for the conveyances.*”

“There is no doubt in my mind that the proposed development of the area should be on a registered plan of subdivision only and consequently the Committee of Adjustment was wrong in granting the conveyance.”

“... there was no one present at the hearing to represent the Meadows Company nor did anyone in the audience identify himself as a possible purchaser of either of the lots. Ralph Dalton, Reeve of the Township, gave evidence in support of the decision of the Committee. He stated that in his opinion it would be quite safe to develop the subdivision without requiring the servicing of the lots with piped water as it is very similar to an adjacent one that has been developed successfully without such service. In addition, *the township is very*

anxious to obtain the assessment that would result from the development and the council has been frustrated for some time by lack of approval of the large part of the plan."

Appeals allowed: *Minister of Municipal Affairs (Acting) and the Committee of Adjustment of the Township of Tay, re applications by the Meadows Land Development Company Limited, O.M.B. P-5158-67, 26th April, 1968.*

Parcel Forming Part of Proposed Plan of Sub-Division — Not Approved by Minister — Jurisdiction of Committee — An appeal by the original applicant against the decision of the Committee dismissing an application for the severance of a parcel having a frontage of 250.83 feet and a depth of 196.94 feet, comprising some 1.558 acres.

"Very early in the hearing it was brought to my attention that *the land for which permission to convey is sought forms part of a proposed plan of subdivision forwarded to the Minister last year but not as yet circulated*. While it may be idle to speculate upon the delay it is generally agreed by the parties that it results from an inadequacy of basic municipal services within the municipality for the development proposed. It would appear that the last plan of subdivision for the municipality was registered in January, 1964, and half or two-thirds of the lots were not released due to servicing problems."

"The appeal is opposed by the town in the person of its legal counsel, who takes the position that this very small subdivision should remain intact until it can be dealt with at one time when the whole plan is being considered."

"Evidence given by one of the appellants was to the effect that the lands of which the subject form part, constitute some 6 acres and that 4½ acres would remain if the conveyance is granted. He states that the partnership has agreed that he should take possession of Lot 14 which contains a large three-storey house thereon, and to this end the conveyance was requested of the Committee of Adjustment. The house is to be used as a residence and in the opinion of this witness, at least, its severance would not adversely affect the plan now before the Minister.

"I have considered carefully the written reasons of the Committee of Adjustment in dismissing the application and it is quite clear that the Committee has adopted a given set of guide lines and since the applicants were not able to bring themselves within their requirements the application was dismissed.

“Perhaps exception can be taken to the adoption of a procedure which does not leave much to be determined upon the merits of a particular case. However, it would appear on the whole that the final decision taken by the Committee was in the circumstances a proper one. Of more importance to me, however, is the fact that section 32b (1) (2a) of *The Planning Act* permits the Committee to grant variances provided, and, I quote in part:

‘the Committee is satisfied that a plan of subdivision of the land described in the application approved under section 28 is not necessary for the proper and orderly development of the municipality.’

“In view of the question yet to be determined regarding the possible re-alignment or redesign of No. 10 Highway, it would be very difficult to state with any degree of certainty that a plan of subdivision of the subject land would not be necessary for the proper and orderly development of the municipality.

“There is, however, a most significant point, the importance of which appears to have eluded the Committee and that has to do with the fact that *the lands proposed for severance are at the present time part of a proposed plan of subdivision even now before the Minister*. One does not have to speculate to realize what chaos could result if a precedent were established whereby subdivisions awaiting the Minister’s approval were being dismembered in the interval. This fact alone is good and sufficient reason for dismissal.

“While there is apparently nothing in the Act which would exclude such variances being granted despite the existence of draft plans the adoption of such a procedure would make redundant one of the main purposes of *The Planning Act* which is to ensure the orderly development of a municipality based upon proper plans of subdivision served by efficient and modern municipal services. The Act, of course, also provides for those cases where it may well be desirable to permit certain severances where the evidence indicates that their approval will not adversely affect the planning policies of a municipality.”

“Despite the eloquent and persuasive powers of counsel for the appellants, I am of the opinion that the decision of the Committee should not be interfered with for the reasons above stated . . .”

Appeal dismissed: *Bruce, Olga, and Michael A. Donnelly and the Committee of Adjustment of the Town of Brampton, O.M.B. P-3417-67, September, 1967.*

Parking — Jurisdiction — No Authority to Authorize Continuation of Illegal Non-Conforming Use — An appeal by objectors against a decision of the Committee granting an application, upon conditions, for a minor variance from the provisions of the township by-law, to permit the continued use of certain land as a parking lot.

The appellants contend that at the time the by-law was enacted the lands under consideration were not used for parking purposes. The respondent disputes this allegation. The Board stated that “I would first like to examine this issue which is fundamental to the jurisdiction of the Committee of Adjustment and, indeed, to this Board” and commented further “The Committee of Adjustment must derive its authority from section 32b (2) of *The Planning Act*. . . . This section specifically outlines the powers of the Committee of Adjustment to authorize such minor variances.”

The Board then expressed the opinion that “From a reading of the relevant subsections that when any Committee of Adjustment is seized of such an application it ought to satisfy itself that the use of the land is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses provided by the by-law.”

“In the present application there is considerable dispute on this very issue. The appellants have urged the Board to consider that the lot was ungraded until after the passing of the by-law, and that parking, if any, was limited to a very small area and limited to a relatively low volume of use concentrated near the rear of the building itself and not throughout the lot. The president of the respondent corporation alleges that the area has always been dedicated to parking even if not so used. He agreed that the parking has been almost limited to shopkeepers with premises in the shopping complex, adding that the rough, ungraded surface except for a small delivery area, was less appealing to the members of the general public.”

“Aside from the discrepancy of evidence between the appellants and respondent certain facts do stand out. The lot, which is approximately 300 feet by 100 feet, had a rough surface until recently and at the time that the by-law was enacted the only portion of it used for parking was a narrow, gravel lane at the rear of the store. In fact, one small area, 50 feet by 100 feet, was being used for weeping tiles and fenced off to prevent parking.”

The Board then decided that “in light of the evidence adduced there is no doubt in my mind that the use sought to be allowed is neither similar to the purpose for which it was used on the day of the passing of the by-law nor is

it more compatible with the uses permitted by the by-law as set out in the above section.”

“Having come to the conclusion that what was purported to be done by the Committee of Adjustment was not within its jurisdiction I also find myself without jurisdiction and it will be unnecessary for me to deal with the merits of the application.”

Appeal allowed: *Craig, George Marcus, and Sarsfield Francis Hanlon and the Committee of Adjustment of the Township of Nepean, re an application by Lancaster Shopping Centre Limited, O.M.B. P-4366-67, 17th January, 1968.*

Sanction of existing use — No jurisdiction to make finding of valid legal non-conforming use — An appeal by the original applicant against a decision of the Committee dismissing an application in which under the words “nature and extent of relief applied for” it was stated:

“The applicant requests the authorization of the Committee of Adjustment for a Minor Variance from By-Law AZ 64 (as amended) relating to the existing use of the applicant’s property at 475 Cambridge Street in the City of Ottawa. This property is located in an R-6 zone; the building is now being used for commercial and manufacturing purposes and has been used for similar uses since the date of its erection on or about 1925.”

“Under the words “Why relief is requested. (That is, why it is not possible to comply with the By-Law)”, he stated:

“We submit that the only economic and practical use which can be made of this building is a commercial or industrial one. As stated in paragraph 6, the authorization of the Committee of Adjustments will merely sanction a type of use which has been made since approximately 1925.”

“In the Board’s opinion neither the Committee of Adjustment or this Board has jurisdiction to make a finding that the appellant has a valid legal non-conforming use.

“The point at issue is whether the various activities carried on in the subject premises were closely enough allied to come within the term of one ‘use’ as contained in Section 32b (2) (a) of *The Planning Act* which reads as follows:

“‘(a) where any land, building or structure, on the day the by-law was passed, was used for a purpose prohibited by the by-law and such use has continued until the date of the application to the Committee, may permit, . . .’

“In the Board’s opinion this is a straight judicial determination and is beyond the jurisdiction of both the Committee of Adjustment and of this Board as the members of neither were appointed by the Governor General in Council. *Quance vs. Thomas A. Ivey & Sons Limited* 1950 O.R. 397, 1950 3 D.L.R. 656 *C.A. Toronto vs. Olympia Edward Recreation Club Limited* 1955 S.C.R. 454, 1955 3 D.L.R. 641.

“It would appear that in order for this Board to have jurisdiction to find that the appellant had a valid non-conforming use, he would have to apply for some consequential relief. *The London Railway Commission et al vs. The Village of Port Stanley, the same vs. the Township of Yarmouth* 1954 O.R. 486, 1954 3 D.L.R. 475.

“In the Board’s opinion the applicant is on the horns of a dilemma. If the activities that have been carried on upon the subject property all fall within the term of one ‘use’ as contained in the above subsection of *The Planning Act* then he does not need any approval of the Committee of Adjustment or of this Board. If on the other hand they do not fall within the term of one ‘use’ then such use has not continued from the date of the passing of the by-law until the date application was made to the Committee of Adjustment and both the Committee of Adjustment and this Board are without jurisdiction.

“It would seem evident from the foregoing that a purchaser of property that enjoys a non-conforming use and who desires to change the activity that has been carried on on the property, should before the former occupant has vacated the property, apply to the Committee of Adjustment under Section 32b (2) (a) (ii) which reads as follows:

“ ‘(ii) the use of such land, building or structure for a purpose that, in the opinion of the Committee, is similiar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law that the purpose for which it was used on the day the by-law was passed, provided that the land, building or structure continues to be used in the same manner and for the same purpose as is authorized by the decision of the committee; or . . . ’

“It would then appear that the decision of the Committee of Adjustment under this subsection would be an administrative decision and the Committee could then determine as the precondition for the exercise of its discretion whether one ‘use’ had continued from the date of the passing of the by-law up until the application was made to the Committee of Adjustment.”

Appeal dismissed for want of jurisdiction: *Williams, Charles K., and the Committee of Adjustment of the City of Ottawa, O.M.B. P.7345-68, 3rd April, 1969.*

Severance — Conditions imposed prohibiting erection of buildings and restricting use of land — Beyond powers of Committee — Application by “Agent” — An appeal by a property owner against a decision of the Committee granting an application to convey a parcel of land subject to the following conditions:

“1(b) The applicant shall pay to the Township of Beverly the sum of Four Hundred Dollars.

“3. The purchaser is to be advised that no further separation of this parcel will be considered by this Committee and this parcel is deemed not to be a building lot and no building permits shall be applied for re this parcel of land.

“4. When completed this property will be used for quiet possession and passive recreation as stated on the application for severance.

“The stated grounds for appealing are that the said conditions are improper and beyond the powers of the Committee.

“According to the evidence, the imposition of conditions restricting the use of the land was recommended to the Committee by the area planning board because there is no by-law restricting different land uses to specific zones in effect in this township. The township does have an Official Plan and the subject property is in an area designated Agricultural by that Plan. A new zoning by-law to implement the Official Plan has not yet been prepared. By-law 1137 passed July 25, 1955, as amended by By-law 1143, passed April 2, 1956, regulates lot sizes and front yard, rear yard and side yard set-backs for buildings used for residential, business and industrial purposes. These by-laws permit any land in the township to be used for any of the above-mentioned purposes and also for agricultural purposes, forestry or for a public park, garden or playground.

“A matter of primary concern is the question of jurisdiction. Section 32b (2a) of *The Planning Act* provides that a Committee of Adjustment may consent to a conveyance “upon the application of the owner . . . or any person authorized in writing by such owner.”

“The application to the Committee in this matter was made and signed by one H. Barlow who described himself in the declaration to the application as

“Agent for B. Kronas Ltd.” It is conceded by counsel for the appellant that Barlow was not authorized in writing by the owner (the appellant) to make the application. It appears that Barlow approached the owner with respect to selling this portion of his property and offered to look after the matter of getting approval from the Committee of Adjustment, and the owner agreed verbally that Barlow could make the application to the Committee.

“The application was considered at a meeting of the Committee on June 12, 1969, and again on July 31, 1969. Copies of the minutes for those meetings, filed with the Board prior to this hearing, show that at both meetings Barlow and Patterson, the owner, “were present to discuss this application with the Committee.” A certified copy of the signed decision of the Committee, also filed with the Board prior to this hearing, commences with the following words:

‘That the application of Mr. Ross Patterson, R.R. 1, Galt, Ontario for consent to convey . . . be approved subject to the following conditions . . .’

“It appears from the documents filed that the Committee dealt with this as an application by Patterson rather than an application by Barlow. It is possible that the Committee amended the application before it. It is clear that the application was made with full knowledge of the owner and supported by him at the hearing before the Committee and also at this hearing. I shall therefore deal with the appeal on its merits.

“Section 32b (9a) of *The Planning Act* provides that a Committee has the same powers with respect to a consent as the Minister has to an approval of a plan of subdivision under subsections 5 and 8 of Section 28. *The imposition of a monetary charge per lot or per dwelling unit under the authority of clause (d) of subsection 5 is not uncommon. Condition 1.(b) falls within that category in my opinion and is within the powers of the Committee.*

“Apart from the particular matters mentioned in clauses (a) to (d) inclusive, subsection 5 gives authority to the Minister to impose in general such conditions “as in his opinion are advisable.” I do not consider that conditions 3 and 4 come under that general authority. The purchaser would be entitled by statute to apply for consent to a conveyance of part of the land acquired if he so desired, and such application would have to be considered by the Committee and, if appealed, by this Board. *Prohibitions against the erection of buildings and the issuance of building permits are matters over which council has specific jurisdiction. Condition 4 represents an attempt to zone the subject land to a particular use. Even though the intention may be good because of the council’s failure to act, and the restriction may be for the proper use of the land, it is*

a matter to be dealt with by a by-law under the authority of Section 30 of the Act. In my opinion, conditions 3 and 4 are beyond the jurisdiction of the Committee.

“The appeal, however, brings the whole matter into question, not only the conditions but whether consent to the conveyance itself should be granted. Section 32b(9a) requires that consideration be given to the matters mentioned in subsection 4 of section 28. These include among others whether it conforms to the Official Plan, whether it is premature or necessary in the public interest and the suitability of the land for the purposes for which it is to be subdivided.

“As stated earlier the township does have an Official Plan and the subject land is in an area designated Agricultural therein. The proposed use of the land is shown in the application form as “Quiet Possession and Passive Recreation.” It was stated in evidence by a representative of the Planning Board that recreational uses should be in areas designated Open Space by the Official Plan rather than in areas designated Agricultural. The township does not have a zoning by-law implementing the Official Plan by permitting and restricting uses in their appropriate areas, and accordingly there is little or no protection to existing uses and no guide lines for future development. The purchaser could use the property for any purpose, residential, commercial, industrial or agricultural. There is no evidence that the conveyance is necessary to the owner, the purchaser or in the public interest. The lack of a zoning by-law and lack of evidence that the conveyance is necessary make the proposal to subdivide premature in my opinion. There is also no evidence that the subject land is suitable either for the proposed recreational use, for agricultural purposes, or for any purpose.”

Consent of Committee set aside: *Patterson, Ross, and the Committee of Adjustment of the Township of Beverly, O.M.B. R.253-69, 28th May, 1970.*

Section 28 (5) and (8) — Consent to Mortgage — Condition of Committee requiring Dedication of Land not described in Application overruled — Interpretation of Committee’s powers under — An appeal by the original applicant against a decision of the Committee granting upon condition certain applications.

“The appellant is the owner of the property at the south-east corner of Cawthra Road and Burnhamthorpe Road with frontages of 268.5 feet on Cawthra and 322.54 feet on Burnhamthorpe and commenced the develop-

ment of a shopping plaza thereon in 1966. The main building is occupied by an A & P Supermarket under a long term lease. Adjoining buildings are rented by various tenants including a bank, beauty salon, dry cleaning depot, drug store and dental office. The second floors of these adjoining buildings were intended for offices and apartments but are for the most part unfinished. *The applications to the Committee of Adjustment were for consents to mortgage these adjoining properties to raise funds for the cost of completing the construction.*

“The first application, File P-5428-68, is in respect of the easterly portion of the property with a frontage of 68.24 feet on Burnhamthorpe Road and the building thereon. The second and third applications, Files P.5429-68 and P.5430-68, relate to the parcels adjoining to the west of the first and the buildings thereon with frontages of 29.54 feet and 30.29 feet respectively on Burnhamthorpe.

“The applications were considered jointly by the Committee of Adjustment and granted subject to certain conditions which were the same for each application. The appeal to this Board is against the first of these conditions only. Condition numbered one reads as follows:

- ‘1. A 27’ perpendicular width road widening across the Burnhamthorpe Road frontage of 323’ more or less, and 260’ more or less, along the Cawthra Road flankage.’

“It is apparent from the wording of this condition that the Committee sought to impose as a requirement the *dedication of a strip of land 27 feet in depth along the remainder of the applicant’s property as well as along the frontages of those parcels which were the subject of his applications* and which totalled in length of frontage 128.07 feet only.

“The first point at issue is whether the Committee of Adjustment in dealing with an application made under subsection 2a of Section 32b of *The Planning Act* has authority to impose conditions upon other lands owned by the applicant as well as upon those lands which are the subject of the application. The authority given in Section 32b (9a) to impose conditions refers to subsections 5 and 8 of Section 28 of *The Planning Act*.

“Under subsection 2a a Committee may consent to a conveyance, mortgage, charge or agreement provided that the Committee is satisfied that plan of subdivision of *the land described in the application* is not necessary. It appears to me that this subsection instructs a Committee of Adjustment to direct its consideration to that land which is described in the application. Following from

that point I believe that the clause in subsection 9a reading “and has the same powers with respect to a consent as the Minister has to an approval of a plan of subdivision” must be interpreted to mean that the Committee has the same powers with respect to a consent *in respect of the land described in the application* and that for the purpose of considering and imposing any of the conditions described in subsections 5 and 8 of Section 28 it is necessary to substitute “the land described in the application for which consent is sought” for the words “plan of subdivision” or “subdivision.” The authority to impose as a condition the dedication of land for road widening purposes under Section 28 (5) (c) provides for the dedication of land within the plan, submitted to the Minister for consideration. In my opinion *the authority of the Committee of Adjustment or this Board to require the dedication of lands upon an application for consent is limited to dedication of land within the lands described in such application.* For these reasons I would vary the condition imposed by the Committee.

“It is submitted by the appellant that it would be inequitable at this stage to require the dedication of land for road widening across the frontages of those parcels described in the applications, that the municipality should not seek to gain now after rentals and leases have been finalized that which it did not require when building permits were granted and the development undertaken. I do not consider this a conclusive argument because the expressed purpose of the appellant is to acquire funds to complete the development by finishing the interior of the second storey of each of the buildings adjoining the main building to provide offices and apartments which would be rented in the future.

“It is also submitted by the appellant that it would be impossible for him to comply with any requirement of land dedication to the municipality because of the terms of the lease (Exhibit 7) covering the subject lands and the remainder of the corner property owned by the appellant, that the land dedication proposed would reduce substantially the parking area and require its relocation and there was no probability that the lessee would consent. On the other hand counsel for the municipality submits that the aforementioned lease and the mortgage agreement between the appellant and A & P Properties Limited, filed as Exhibit 8, are not valid and should be ignored by the Board. The question of their validity is not for this Board to determine and apart from their validity the matter which is before the Board may be decided on its merits.

“The application is to promote additional development of these lands. It is the policy and practice of the municipality on plans of subdivisions or con-

sents involving the development of lands to require dedication of land for road widening if such widening will be necessary in the foreseeable future. It will be necessary to widen Burnhamthorpe Road in this area in the near future. The widening of Burnhamthorpe permitting easier access to this property and a smooth flow of traffic should attract more traffic and customers to the area and have a beneficial effect on this commercial property. In my opinion, it would be inequitable to those other properties which have been and are being required to make land dedications for road widening to permit this property to escape such requirement. As indicated previously, however, I would limit such dedication to the frontages of the properties described in the applications. In order to forestall other possible complications I would also require as a condition that the appellant file consents of any other persons having an interest in these lands to the land dedication.”

The Board set aside condition 1 in the Committee’s decision and substituted therefor conditions in respect of each of the three properties which had the effect of limiting the dedication to the frontages of the properties described in the application, totalling 128.07 feet.

Appeal allowed in part — Committee condition varied: *Wab Investments and Developments Limited and the Committee of Adjustment of the Town of Mississauga, O.M.B. P.5428-68, P.5429-68, and P.5430-68, 20th August, 1968.*

Suites, Increase in — Construction of by-law — Beyond power of Board to decide — Effect of building permit already issued — Costs — An appeal by a number of objectors to a decision of the Committee of Adjustment granting an application to increase the number of units in an apartment building from 112 to 141.

“To put it mildly, the evidence would indicate that the circumstances in this case were most unusual. According to L. M. Rosen, who is a real estate broker and financially interested in the development, the property was acquired in 1963 and contained 45,029 square feet. According to the view of the Windsor Building Department this would allow 112 suites based on minimum lot area of 400 square feet per unit.

“Architects were employed and plans were prepared for a building of 141 suites. How the architects arrived at this number of suites remains a mystery as no member of the architects’ firm was called as a witness. The plans also called for some commercial development.

“On June 9, 1965, an application signed by Norman Hurwitz was made to the Committee of Adjustment in which the relief applied for was:

“Request permission to exceed 125'2" height limitation by 11 feet 10 inches.”

Mr. Hurwitz was also not called as a witness to explain the circumstance surrounding the signing of this application.

“The Committee conducted a hearing on the 23rd day of June, 1965. Its order bearing date the 30th day of June, 1965, reads in part as follows:

‘And it is hereby further ordered that the lands and premises above described be, and they are hereby exempted from the provisions and operation of the said By-law Number 728 so as to permit in a C2A District the construction of a fifteen storey apartment building to a height of 137 feet.

“On August 31, 1965, a building permit, No. B25837, for the foundation was issued, purportedly by P. Allen, in which the building is described as a 15-storey apartment with a height of 137 feet.

“On October 27, 1965, a commitment for a first mortgage for \$1,725,000 was obtained from the Prudential Insurance Company of America. However, the structure was not proceeded with until 1967. On September 1, 1967, a building permit was issued, purportedly by P. Maguire, the building commissioner, and contains the following opposite remarks:

‘Erect Upper Structure for Apartment Building and Commercial Stores — Additional Permit to B-19823 — (141 units).’

“F. W. Knight was solicitor for the insurance company and upon checking the zoning came to the obvious conclusion that there was no authority for the building permit to be issued for more than 112 units.

“A further application was then made to the Committee of Adjustment to allow the 141 units and any other variations required as to lot width, height, front yard depth, side yard width and rear yard depth. On the 24th day of November, 1967, the Committee of Adjustment issued its order which reads in part as follows:

‘And it is hereby further ordered that the lands and premises above described be and they are hereby exempted from the provisions and operation of the said by-law number 728 so as to permit in C2A district the construction of a fifteen storey apartment building consisting of 141 units having a ground floor

area of 10,659 square feet, a gross floor area of 159,885 square feet, a width of 68 feet, a length of 155 feet and a height of 137 feet and on a lot having an area of 45,029 square feet.”

“At the hearing W. A. Wilson, Q.C., counsel for the ratepayers, argued that the area on which the non-residential commercial building was being erected should be deducted from the lot area and that if this were done the number of suites would be reduced to 90. This point would seem arguable but *as it involves the construction of a by-law it would seem a matter of law which this Board would not have jurisdiction to decide.*

“Dealing then with the merits of the appeal, it is evident that looking at the actions of the developers in the most favourable light they have been grossly careless in protecting their own interests. There is a good deal of merit in Mr. Wilson’s argument that they should be regarded as the author of their own misfortune and I should recommend that the appeal be allowed.

“I feel, however, that *I cannot ignore the fact that they proceeded on the basis of a building permit issued by the City Building Department* and that they have made extensive financial commitments as a result. The building at the time of the hearing was at the 12th floor and it seems to me that unless some relief is granted the respondents they may well find themselves in very serious financial difficulties.

“I therefore recommend that:

1. The decision of the Committee of Adjustment be set aside.
2. The respondents be allowed an increase of ten per cent in the number of suites permitted by the by-law.
3. This variation be granted subject to the condition that the commercial areas as shown on the plans on file with the Building Department may not be increased.
4. If the respondent does not wish to accept the above condition that the appeal should be allowed in full.
5. The respondent should in any event pay to the appellants their costs as between party and party on the Supreme Court scale to be taxed by the Taxing Officer at Toronto.”

Appeal decided as above: *Waffle, Donald R., and others and the Committee of Adjustment of the City of Windsor, re an application by William Hurwitz and Norman Hurwitz, O.M.B. P-5058-67, 6th February, 1968.*

Variance from County By-law — No authority For Appeal to Committee of Adjustment — An appeal by the Newmarket Planning Board against a decision of the Committee granting an application for a variance which authorized a reduction in the minimum set-back from the centreline of a highway, known as Davis Drive, from 75 feet to 37 feet. "Davis Drive is an arterial road reconstructed about two years ago with the paved portion being 48 feet in width."

"County of York By-law No. 2719, passed June 2, 1965, provides that any building or structure shall not be erected closer than 75 feet to the centreline of County Road No. 31, which is Davis Drive. Section 64(2) of *The Highway Improvement Act* provides that in the event of conflict between a by-law passed by a county under that section and a by-law passed under Section 30 of *The Planning Act*, the by-law of the county prevails. There appears to be *no authority for an appeal to a Committee of Adjustment for a variance from the provisions of such a by-law of a county*. The kind of relief from provisions of the by-law of a local municipality as sought here would appear to be of little value unless relief could be obtained by some means from the county by-law."

The required set-back from the centreline of 75 feet is contained in the official plan of the Newmarket Planning Area and in the comprehensive zoning by-law passed by the town council to implement the official plan.

The board stated "the variance sought before the Committee of Adjustment is not a minor variance, and even if it was, it is not one that would permit the general intent and purpose of the by-law and of the official plan to be maintained."

Appeal allowed: *Newmarket Planning Board and the Committee of Adjustment of the Town of Newmarket, re an application by Egbert Klein Horsman, O.M.B. P-4854-67, 3rd April, 1968.*

Zoned Residential — Lawful Non-conforming Use — Replacement of Buildings used for Storage — An appeal by the Minister against a decision of the Committee granting an application from a contractor who is the owner of a lot upon which he stores equipment and supplies. The lot is located in a residentially zoned area which makes the present use a lawful non-conforming one. The Committee of Adjustment granted its approval and consent to the application which requested authority "to replace existing buildings with one new building."

“An appeal was then filed by the Minister against the decision of the Committee of Adjustment pursuant to subsection 12 of section 32(b) of *The Planning Act*. Counsel for the Minister argued that the Committee was without jurisdiction to make such a decision.”

“After due consideration of the pertinent section of the statute, I have come to the conclusion that the Committee of Adjustment had no power to make the decision that it did in this application. Since this Board possesses no greater power than the Committee it too is without jurisdiction in this matter.”

Appeal allowed: *Minister of Municipal Affairs, and the Committee of Adjustment of the Township of Thorold, re an application by Norman Hudson, O.M.B. P-5714-67, 11th March, 1968.*

Chapter III

Policy Resolutions of the Committee

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Committee — Policy Resolutions of Considered — Severance To Convey Lands Upon Which Dwelling Already Erected — An appeal by the original applicant against the decision of the Committee dismissing an application for the severance of a parcel of land from a total holding of 35 acres so that a rectangular parcel having a frontage of 85 feet upon a highway with a depth of approximately 200 feet would be separated. "It is intended by the owner-applicant to convey this parcel of land on which there is erected a one and a half storey brick dwelling."

The applicant does not occupy the dwelling, which is rented, nor does he personally farm the land, zoned agricultural use, from which the said parcel is sought to be separated. The balance of the property is being leased for farming operations.

The municipality objected to the severance on the ground that if the applicant wanted to dispose of the land through severance he ought to apply for a plan of subdivision.

"It was also stated that this particular area was under constant review with a view to having allocated therein higher class dwellings since the lands of Mr. Jeffries, the applicant, benefited from a more than average view of the surrounding area. Mr. Dean also expressed the view that development in that particular area should be organized and planned and that a premature development might cause a burden upon schooling and other municipal services."

The Board stated ". . . In my view, however, these reasons do no preclude the granting of consents in cases such as this. In the present instance the application is being made in order to convey a dwelling which is already erected and which in any event has been leased to a third party and this in itself would defeat the objection as to the increase in population since the lands are situated in a non-urban area and would create no municipal problem *per se*. This application should be considered on its own merit and should not be taken as establishing a precedent that might encourage other less deserving applications. . . . It was suggested that the Township of Niagara Committee of Adjustment had certain policy resolutions, and without commenting at length upon this set of resolutions I would merely like to indicate that a Committee of Adjustment should, in each instance, exercise its independent judgment and should not fetter itself with principles and require every applicant to meet them."

Appeal allowed: *Jeffries, Harold C., and the Committee of Adjustment of the Township of Niagara, O.M.B. P-2170-66, 10th January, 1967.*

Conditions restricted to application under consideration — Pre-determination of other applications — An appeal by the original applicant against conditions contained in a decision of the Committee granting an application for the severance of a parcel of land located at the intersection of two highways having a frontage on one side of 80 feet and on the other of approximately 152 feet. The property, when conveyed is to be used for the operation of a gas bar.

“The condition appealed against can be found in the decision of the Committee of Adjustment dated the 19th of May, 1967 filed, and it reads as follows: ‘Accordingly the application is granted, subject to the following conditions, namely that no further applications for consents respecting the remaining lands owned by the applicant will be considered until such time as the owner files a comprehensive plan showing the overall proposed development plan for the balance of the area and that the applicant submit to the Secretary-Treasurer of the Committee an executed conveyance for which consent is required, together with a copy for the files of the Committee.’”

“Counsel for the appellant submits that the condition above set out is illegal and not within the competence and jurisdiction of the Committee of Adjustment to impose. I agree with him that the condition amounts to a predetermination of other applications without consideration whatsoever to the merit of any other application when and if filed either by the appellant or its successor in title. It is a statement which is wrong and indeed would amount to a denial of natural justice. That the Committee of Adjustment could impose certain conditions in its decision is clear and without question but the enabling section (Section 32b (9) of *The Planning Act*) speaks of “a permission . . . subject to such terms and conditions . . .” and *if there are conditions these should be restricted to the application under consideration without reference to applications yet to come* and about the merit of which the Committee of Adjustment is unable to speculate. Nonetheless in view of my conclusions in this appeal it is immaterial to consider this aspect more fully.”

“The City is cross appealing the decision of the Committee of Adjustment and submits that the decision is wrong in that the Committee of Adjustment did not consider or have full regards to the matter set out in Section 28(4) of *The Planning Act* before determining if the severance ought to be allowed.”

“The City’s position is supported by a number of ratepayers from the area, who opposed the application in the first instance and appeared at the hearing to support the cross appeal since they did not know what use will be made of the balance of the property.”

The Board decided “It would appear to me from the decision of the Com-

mittee of Adjustment that it did not sufficiently consider these matters set out under Section 28(4) . . .”.

Cross appeal allowed and decision of Committee set aside without prejudice to the applicant making a fresh application to the Committee: *M. W. Kosub Limited and the Committee of Adjustment of the City of Ottawa, O.M.B. P-3869-67, 6th October, 1967.*

Decision to be made on the facts — Conveyancing policy overruled — An appeal by the original applicant against a decision of the Committee dismissing an application for a consent to convey a lot with a frontage of 100 feet and a depth of 200 feet to the appellant’s brother.

“Evidence was adduced at the hearing that the Township of East Flamborough is covered by an official plan but there is no comprehensive zoning by-law on the area in question. There is provision in the official plan that residential development be restricted to hamlet areas and that such development in agricultural zones be discouraged.

“Although this provision does exist in the official plan, the evidence indicated that consents have been given on several occasions in the last year for lots of the same dimensions as the subject lot.

“I think it is interesting to note that in refusing this application the Committee of Adjustment made the following decision:

‘That this application to convey a lot 100’ x 200’ to a brother for residential purposes be refused on the basis that it does not comply with the Conveyance Policy for residential lots in East Flamborough Township.’

“The said conveyance policy was entered as Exhibit 2 at the hearing and lists a number of conditions under which consents may or may not be granted for residential lots located in an agricultural classification of the township.

“I have not had an opportunity to examine the said Exhibit 2 at length and in light of the decision of the Court of Appeal in *Re Hopedale Developments Ltd. and Town of Oakville (1965) 1 O.R. 259*, I have come to the conclusion that the Committee of Adjustment should not fetter itself by having laid down principles which require the applicant to meet and exclude other considerations which may arise in a particular case.

“The whole matter of granting consents in this township from the evidence seems to be predicated on compliance with the said conveyance policy and not with what might be called good planning principles.”

Appeal allowed: *Frandsen, Earl, and the Committee of Adjustment of the Township of East Flamborough, O.M.B. P-7397-68, 7th February, 1969.*

Chapter IV

Review of Decisions of Ontario Municipal Board

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Review of Decision of the Board — Application for variance — An application under section 42 of *The Ontario Municipal Board Act* requesting a review of the decision of the Board dismissing an appeal from the Committee of Adjustment.

“The application to the Committee was for a variance under section 32b of *The Planning Act* to permit the erection of a single family residence on a parcel of land having a frontage of only 20 feet on a public street, while the by-law requires a minimum frontage of 50 feet.”

“The basis of the application for a review was the contention advanced on behalf of the applicant that the Board had made an erroneous assumption as to the direction in which the proposed residence would face. The applicant contended that it would face on an adjoining park while it might be inferred from the Board’s decision that it was expected the residence would face in the opposite direction.”

The Board decided that “it is not necessary to consider the merit of this contention because I am of the opinion that the granting of a variance from the 50 foot minimum required by the by-law to a frontage of 20 feet is not a minor variance and therefore is not within the Statute.”

Application dismissed: *Mansbridge, L. C., and the Committee of Adjustment of the Town of Stoney Creek, O.M.B. P-5063-67, 2nd July, 1968.*

Review of Decision of the Board — Application for Consent — “This is a motion for review of the decision at the hearing by this Board on February 14, 1969, allowing the appeal and setting aside the decision of the Committee of Adjustment consenting to a conveyance.

“The parcel of land said to be owned by the applicants is situate at the north-west corner of East Avenue and Fanfare Avenue having a frontage on East Avenue of 125 feet and a depth along Fanfare Avenue of 135 feet. At the present there is a one-storey brick dwelling situate on these lands. The application was to divide the lot in a north-south direction by an irregular line commencing on Fanfare Avenue, a distance of 46 feet west of East Avenue and following an irregular course skirting the building at a distance of 4 feet and terminating at the northerly side of the lot, a distance of 74 feet west of East Avenue.

“The reasons for the decision of the Board appearing in the file are as follows:

“ ‘From the evidence adduced by the respondents it was learned that if the severance was allowed a variance would be created on the parcel remaining. It was also conceded by the respondents that this variance has gone unnoticed until this hearing.

“The Board has always held that it will not be a party to any action which would result in a breach of the municipalities’ by-laws.

“The Board is of the opinion that in addition to the subject application to the Committee of Adjustment by the respondents, there should have been a companion application under section 32b (1) of *The Planning Act* of Ontario in regard to the variance which would have resulted had this appeal been denied.

“The appeal is therefore allowed and the decision of the Committee of Adjustment set aside.’

“In my respectful opinion these reasons are sound and accordingly the application for a review should be denied.”

Review denied: *Arnold, Ronald Charles, and the Committee of Adjustment of the Township of Pickering re an application by Michael J. Collins and Georgina Collins, O.M.B. P-7473-68, 17th June, 1969.*

Review of order by the Board — Conditions imposed by agreement between city and applicant — Valid method — “This is an application for a review of the order of the Board made herein on December 4, 1967, setting aside the decision of the Committee of Adjustment of the City of Toronto and granting an application by Double Z Investments Limited for a variance from the provisions of the by-law. The reason given by the City of Toronto for desiring to have this order reviewed is that the appellant, Double Z Investments Limited, gave a certain undertaking in writing and under seal to the City of Toronto rather than have these conditions incorporated in the Board’s order. In my respectful opinion the method followed in this case is a proper one and imposes upon the appellant conditions just as valid and just as binding as though they were conditions imposed in the formal order of the Board. Actually they might be more binding since the appellant voluntarily agreed to them.

“In the circumstances I am of the opinion that this application fails and ought to be dismissed.”

Application dismissed: *Double Z Investments Limited and the Committee of Adjustment of the City of Toronto, O.M.B. P-4001-67, 1st May, 1969.*

PART II

BY-LAWS AND OFFICIAL PLANS

Chapter V

Holding By-law

Holding By-law — Committee to consider restrictions in effect at time of
Appeal 56

Holding By-law — Committee to consider restrictions in effect at time of appeal — An appeal by the original applicant against a decision of the Committee of Adjustment dismissing applications which would have had the effect of creating two parcels, to be used for residential purposes, having an area substantially less than that required by the by-law.

“The evidence in this matter showed that about one year ago the Township of Yarmouth began a planning programme with the object of producing an official plan and a comprehensive restricted area by-law for the township. These are not yet completed. It is expected that they will be completed and could be approved and be in effect by the late summer of the current year. The council was of the opinion that a “holding by-law” should be passed to regulate development until such time as the by-law already referred to is in effect. This by-law was passed and has received approval for a temporary period by the Ontario Municipal Board and is in effect at the present time. This holding by-law includes as a permitted use throughout the township a dwelling on any registered plan of subdivision or on a lot which has an area of at least 25 acres.”

“The evidence for the appellant dealt with the suitability of the lands for the purpose intended, i.e., for the erection of dwellings, and from the evidence there is nothing that would indicate that the lands are not suitable for the intended purpose. Water would be secured from wells and the evidence indicates that other wells in the area are satisfactory; the soil has a gravel base with clay loam over it; there are some houses in the area which dispose of their sewage through septic tanks and the evidence was that there was no problem with these; schools are conveniently located to the lands in question; and there is a hydro-electric power line along the road in front of these lands.”

The Board decided that “*The Committee of Adjustment and this Board must consider the restrictions that are in effect at the time they are considering such applications and appeals.* The effective by-law as stated earlier requires a dwelling to be located on a lot with an area of at least 25 acres or on a lot in a registered plan of subdivision which existed at the time of the passing of the restricted area by-law. The subject lands do not meet either of these requirements and for this reason it is believed by the Board that the decision of the Committee is the proper one . . .”

Appeal dismissed: *Alway, Ronald, and the Committee of Adjustment of the Township of Yarmouth, O.M.B. P-4743-67 and P-4744-67, 14th May, 1968.*

Chapter VI

Unapproved By-law

Committee Refusal Based on Unapproved By-law — No Authority —
Apartment Addition 58

Refusal of Severance by Committee — Unapproved By-law subsequently
amended 59

Committee Refusal Based on Unapproved By-law — No Authority — Apartment Addition — An appeal by the original applicant against the decision of the Committee dismissing an application for a variance to permit the addition of one apartment unit to an existing five unit apartment building.

“There does not appear to be any dispute as to the facts pertaining to this application. It is necessary in the interest of clarity however, to briefly outline the history of this subject property.

“The existing apartment building was erected in 1962 by a former owner and at that time a building permit was issued for a five family dwelling structure with additional storage space provided within the walls of the building. It is this space and part of the existing basement that is proposed for the renovation to make possible another apartment unit.

“The then owner, on the 28th day of May, 1965, applied to the Committee of Adjustment for a variance to permit the addition of another apartment unit and on June 16, 1965, the decision was handed down refusing the application on the grounds that the land area was 532 square feet short of the 9,000 square feet required by By-law 2219 and in the opinion of the Committee of Adjustment did not constitute a minor variance. Some time during January 1966, the property was sold to the present owner Van Blokland, and in September of 1966 the new owner made arrangements to purchase land at the rear of his property from the adjacent owner, some 720 square feet in all. He then applied to the Committee of Adjustment firstly for the land separation and secondly for a minor variance to permit construction of a sixth suite. His reasoning at the time was that this became necessary as five days after the original Committee of Adjustment decision a new establishing By-law 2585 was passed by the council and given 3 readings although it is not as yet approved by the Ontario Municipal Board. At that time the Committee of Adjustment allowed the severance but the minor variance requested was not approved. There appears to be no doubt that under By-law 2219 the owner if in possession of the additional land could erect the necessary addition but the increased requirements of By-law 2585 would make this impossible unless a variance was granted.”

The Committee in refusing the variance gave the reason “. . . that the application does not constitute a minor variance with respect to By-law 2585.”

“It is quite clear therefore that in its refusal the Committee of Adjustment concerned itself solely with the requirements of By-law 2585 not yet approved by this Board.

“It is argued by counsel for the corporation in opposition to the appeal that By-law 2585 must be considered by this Board as it was by the Committee of Adjustment since this by-law clearly indicates the intention of council as to land use requirements to be imposed upon the subject land.”

The Board cited section 40(9) of *The Planning Act* and stated “It is my opinion that By-law 2585 cannot be enforced until approval is granted by this Board and that can only be given after a full and proper hearing except in the absence of objections by interested ratepayers.”

“The Committee of Adjustment therefore in proceeding to decide the matter placed its decision squarely upon the requirements of By-law 2585 and, with respect, it would not appear that the Committee had authority so to do.”

“By-law 2219 continues to apply until such time as the new establishing by-law is approved by this Board and in all the circumstances the appellant need only to meet the requirements of this by-law.”

“I am therefore of the opinion that if the appellant exercises his option to purchase the additional lands the severance of which has already been approved, an application to the Committee is not necessary. . .”

Appeal dismissed: *Van Blokland, Johannes J., and the Committee of Adjustment of the Town of Whitby, O.M.B. P-2761-66, 23rd February, 1967.*

Refusal of Severance by Committee — Unapproved By-law subsequently amended — Severance granted — An appeal by the original applicant against the decision of the Committee made on the 25th day of April, 1966, refusing permission to sever a parcel of land on the grounds that the *area was zoned agricultural and the proposed use was to be residential*. “By-law 1158 covering the land use in this area had been passed by the township but had not yet received the approval of the Ontario Municipal Board. The hearing for consideration of the by-law was to be held on November 23, 1966.”

“At the time of the hearing of By-law 1158 the municipal council agreed to an amendment which would permit residential use on the subject land and was agreeable to the severance of all of Mr. Smit’s frontage on Concession 2 to a depth of 210 feet 5 inches.”

“By-law 1158 having now been approved by the Board as amended, the Board will grant a severance of that part of Mr. Smit’s property . . .”

Committee decision set aside: *Smit, Zwaantinus H., and the Committee of Adjustment of the Township of West Oxford, O.M.B. P-1570-66, 4th October, 1967.*

Chapter VII
Anticipated Zoning

Proposed Parcel in Compliance with existing official plan and by-law —
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School Board — Appeal against Granting of Severance Affecting Land
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Proposed Parcel in compliance with existing official plan and by-law — Not in compliance with anticipated re-zoning — An appeal by the original applicant against a decision of the Committee refusing an application for severance.

“The appellant acquired 25 acres on the north side of Highway 7, Green River by way of inheritance from her mother’s estate about a year ago and she and her husband, having disposed of their farm about half a mile away, are presently engaged in replacing the existing dwelling with a new residence and stable and propose to make it their home.

“About a half acre at the south-west corner was sold some years ago and the applicant now proposes to convey the south-east one and one-half acres to her son for the erection of a home thus retaining 210 feet of highway frontage for herself. Her son is employed by the township and works in the vicinity. For twelve years he has occupied the dwelling now about to be demolished.

“The parcel proposed to be severed is about 333 feet by 196 feet and thus comes within a 300 feet strip along the highway designated in the Official Plan for village area in conjunction with the hamlet of Green River. The parcel would also amply conform to zoning limitations as to area and minimum frontage and is acceptable as to drainage and water supply to the local Medical Health Unit.

“However, it was the evidence of the planning director that a proposed realignment of Highway 7 will eliminate the existing jog at Green River and carry the highway from the existing westerly township boundary curve south of Green River in a north-easterly direction to rejoin the easterly link a short distance east of the subject lands. A draft amendment to the Official Plan shortly to come before council will envision a reversion of the lands designated for village use east of Duffin’s Creek, now including not more than five or six homes, to agricultural use and the passage of a zoning amendment to limit the village development to the area west of Duffin’s Creek and south to the highway. It was in this context that it was felt that the Committee’s decision refusing the application found the application to be premature.

“It was not denied that at the moment a severance would permit a residence to be erected on the severed parcel without offence to either official plan or by-law but on the other hand it was amply demonstrated that in the light of anticipated re-zoning the proposed severance would not indicate a compliance with the requisites of section 28(4) of *The Planning Act* particularly when the remaining parcel of about 24 acres would have a frontage of only 210 feet

and thus be of questionable shape for future development. Furthermore no hardship or urgency was evidenced to justify the severance.”

Appeal dismissed: *Mitchell, Florence May, and the Committee of Adjustment of the Township of Pickering, O.M.B. P-8466-69, 20th June, 1969.*

School Board — Appeal against Granting of Severance Affecting Land Adjacent to School — Zoning By-law in Course of Preparation — An appeal by the school board against a decision of the Committee granting an application by Joseph Coukuyt for a severance affecting land adjacent to a school.

The Board was advised that “. . . there is presently no land use by-law in effect in the township but that an official plan has now been prepared by the township’s consultant and is now in the hands of the Minister and that an implementing zoning by-law is in the course of preparation.

“The intended use of the land was stated to be for a gravel pit but there being no one at the hearing for the purchaser it was not possible to confirm this. I have no doubt it is so.

“The school is next door to the proposed severance and objection is taken by the school board on account of traffic, noise and danger to pupils particularly if excavation is carried below ground water level. It was pointed out that the present owner was free to carry on the operation of a gravel pit if he saw fit as there was presently no by-law to prohibit it.

The Board decided “. . . the township is entitled to a reasonable time to complete its zoning by-law and bring it on for hearing and it would be expected that it would deal with gravel pits.”

Appeal adjourned for six months to be brought on again after that time upon the application of either party: *Roman Catholic Separate School No. 18 and the Committee of Adjustment of the Township of Bosanquet, O.M.B. P-1734-66, 28 November, 1966.*

See also later decision O.M.B. P-1734-66, 18th June, 1969, reported at pages 7, 8 and 9.

Chapter VIII

Amending By-law

Application for Variance by Township — Council may Regularize an
Isolated lot by amending By-law 66

Application For Variance By Township — Council May Regularize An Isolated Lot By Amending By-Law — An appeal against the decision of the Committee granting an application by the Township being owner of a parcel of land having a frontage of 98 feet so that this parcel might be subdivided in a manner permitting a building to be erected on the westerly portion of the parcel, having a frontage of 46.8 feet. Minimum lot frontage required under the by-law is 50 feet. The Board stated that it would “appear that the Board is being asked to approve a subdivision of land so as to allow a frontage of less than 50 feet.”

“In the opinion of the Board, the Committee of Adjustment and in turn the Board is not, under Section 32b of *The Planning Act*, clothed with the authority to *permit something to be done which the by-law states shall not be done*. To grant such an application would in our opinion, by-pass the usual procedures required in order to obtain approval of a subdivision. It is our opinion that Section 32b of *The Planning Act* is not intended to be used as an instrument for this purpose, but rather, once a subdivision has taken place, then the Committee of Adjustment or the Municipal Board would have the right to exercise its discretion in deciding if having regard to a lot having a smaller frontage than that permitted under the by-law, it would be proper to permit the erection of a building based on the merits of the application. Since this stage has not yet been reached, it was the opinion of this Board that the application is premature and the Board is without jurisdiction.

“In our opinion where a restricted area by-law is in effect which prescribes minimum lot widths, and where there are unsubdivided parcels of land having frontages greater than the minimums required, it would appear quite proper if council were to attempt to regularize by amending by-law an isolated lot which does not comply with the minimum width requirement.”

Appeal allowed: *Weinstock, Gilbert, and the Committee of Adjustment of the Township of North York, O.M.B. N-8434-64, 23 February, 1965.*

Chapter IX
No By-law

No zoning by-law — Council’s intent considered 68

No zoning by-law — Council's intent considered — An appeal by the original applicant against a decision of the Committee dismissing an application for a severance.

"The appellant wishes a consent to sever a parcel of land of approximately 50 acres from her existing land holdings of some 60 acres in order that she may sell the parcel to a person who intends to use it ultimately for an industrial use. If the appeal is successful the appellant would then own about 9½ acres of land containing two residences plus a barn.

"I was informed at the hearing that the council of the municipality adopted an official plan for the township on December 3rd last and that the plan is now before the Minister of Municipal Affairs for approval. There is no township zoning by-law.

"Evidence indicated that council, after a land use study of the township, wishes this land to be zoned for agricultural purposes. I am of the opinion that severances of such land should only occur where the severed and the remaining parcels are to be used for agricultural purposes in accordance with council's intent."

Appeal dismissed: *Savelli, Antoinette, and the Committee of Adjustment of the Township of Whitchurch, O.M.B. P-7749-68, 3rd June, 1969.*

Chapter X

Intent of By-Law

Change in Use — Grocery Store to Coin Laundry and Dry Cleaners

Pick-up Store — Wide Separation in Uses Permitted by By-law 70

Change in use — Grocery Store to Coin Laundry and Dry Cleaners Pick-up Store — Wide Separation in Uses Permitted by By-law — An appeal by the original applicant against a decision of the Committee dismissing an application for permission to change the use of the property in question from a grocery store to a coin laundry and dry cleaners pick-up store.

The property in question “. . . is situated in a residential zone by the zoning by-law of the City of Kingston and the evidence showed that the greater part of the building is occupied with dwelling units, and that the southerly main floor portion was operated as a grocery store for many years. There is no doubt that this is a lawfully established non-conforming use. The appellant purchased the property in 1948 and operated the grocery store for about 10 years himself, and since then he rented the grocery store space to a tenant. Some time ago the tenant stopped retail sales at this location and used this space to store merchandise which he sells in a grocery store at another location, nearby. The owner of the property now wishes to utilize it for a coin laundry and dry cleaners receiving station. The evidence for the appellant was principally intended to show that the use as a coin laundry and dry-cleaners’ receiving depot was needed to provide a neighbourhood service and it was maintained that such other businesses were some distance removed from the subject property. There was evidence in opposition, which alleged among other things, that the sewer system which would serve this property was not adequate to accommodate the waste water from a coin laundry and the Board was advised that buildings on the street are experiencing difficulty with sewers and with water backing into basements.

“I believe that the appropriate legislation is *The Planning Act* Section 32(b) (2) (ii). The Committee under this section of the Act “may permit” . . . “the use of such land, building or structure for a purpose that in the opinion of the Committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed . . .” The zoning by-law of the City of Kingston first permits a grocery store in a “C” zone which is the most restricted commercial zone. A coin laundry is not permitted in this district. The next commercial zone is a “CC” zone which is less restricted than the “C” zone but this does not include a coin laundry as a permitted use. The third commercial zone is a “D” zone which permits a number of service establishments and a coin laundry is a permitted use in such a zone. Those who drafted the by-law apparently believed it was reasonable to separate the uses in this fashion and the effect of this is to remove the use of

the coin laundry from the “C” and “CC” commercial zones and to place it in a special type of zone. Because of the wide separation in uses between those permitted in the “C” zone and in the “D” zone in my opinion it would not be reasonable to conclude that the proposed uses are similar uses to a grocery store which is the purpose for which the subject property was used on the day the by-law was passed, or that the proposed uses are more compatible with the uses permitted by the by-law than the purpose for which the subject property was used on the day the by-law was passed.

“For these reasons alone I believe that the decision of the Committee of Adjustment is correct.”

Appeal dismissed: *Silver, Donald, and the Committee of Adjustment of the City of Kingston, O.M.B. P-7827-68, 15th May, 1969.*

Chapter XI

Annexed Land — Which By-law Applicable

Land Annexed From Township — Lot Area Requirements in City 74

Land Annexed From Township — Lot Area Requirements in City — An appeal by the original applicant against the decision of the Committee of Adjustment dismissing his application for permission to erect a one storey dwelling on a parcel of land having a frontage of 105 feet and a depth of approximately 207 feet.

The property is now within the City of Windsor and the “. . . situation is that under the former Sandwich East by-law this area was restricted as agricultural and residences permitted only on large parcels. Some time before annexation to the City of Windsor the council of the Township of Sandwich East passed a by-law to reduce the minimum requirement of lot area to 7,500 square feet. This by-law encountered a great number of objections for reasons which are not material here and because of the proximity of annexation nothing was done to obtain approval of the by-law and eliminate what is apparently an unfair condition. In this row of lots on the same street there are several houses constructed on parcels having a frontage of 105 feet and a depth of approximately 207 feet . . .”

The Board decided that “it would seem discriminatory to prevent the further development of this street in a similar manner.

“I think it is preferable, however, if the Council . . . is given an opportunity to review this matter and determine whether it is proper to grant what would appear to be the required amendment, imposing, however, such conditions as the council might see fit.”

Application adjourned to afford the present appellant an opportunity of applying to city council for relief. The Board to be advised as to the action that may be taken by the council and may then consider this application further as the circumstances warrant.

Preussel, Manfred, and the Committee of Adjustment of the City of Windsor, O.M.B. P-1752-66, 9th December, 1966.

Chapter XII
Official Plan

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Non-conformity with official plan — Creation of 8 parcels by 4 consent severances — An appeal by the original applicant against a decision of the Committee dismissing an application for severance.

“The appellant owns a tract of land of some 20 acres and has in the past obtained consents to sever three separate lots from his larger holding each of which lots has a frontage of about 80 feet and depth of some 200 feet lying on the east side of Blair Road in the Township of Elizabethtown. The appellant now wishes to sever a parcel of approximately 20 acres of land from the balance of his holdings which constitute a small tract of land lying between the parcel for which the consent is sought and Blair Road. Because of the location of the three lots previously severed if this appeal is granted the effect would be to create in addition to the severed parcel four separate small lots lying on the east side of Blair Road. The practical effect of a successful appeal would then be to create five separate parcels of land where now one exists. The end result would be that this appellant would have managed to divide his land holdings into eight separate parcels by means of four consent severances.

“At the moment there is no land use by-law affecting these lands but apparently the township council is in the process of drafting such a by-law. The official plan of the township designates these lands as rural and the policy of the official plan in regard to such an area is that residential homes which are accessory to certain permitted specified rural uses will be allowed in a rural zone.

“The appellant states that there is considerable strip development along both sides of Blair Road for its full length of 1,500 feet more or less and also on one side of an adjoining street. The appellant says that the small lots which would be created if this appeal were successful could be deemed to be infilling and further that there is little room for further residential development on Blair Road. Apparently most of the homes on Blair Road were built prior to the date of the official plan and only about three homes have been built since that time. It seems obvious that unrestricted strip development has been permitted in the past but I find this is no excuse for letting it continue.

“I am of the opinion that to grant this appeal with the subsequent result of four small lots on Blair Road is a contravention of the intention of the official plan expressed aforesaid and for that reason I would recommend that the appeal be dismissed in accordance with subsection (a) of Section 28(4) of *The Planning Act* of Ontario.

Appeal dismissed: *Schmitt, Henry, and the Committee of Adjustment of the Township of Elizabethtown, O.M.B. P-7211-68, 25th February, 1969.*

Official Plan and Actual Practice — Conflict Between — The Committee granted, upon a condition, a consent to convey a parcel of land designated as agricultural in the Official Plan.

“The lot with which this appeal is concerned has a width of 100 feet with a depth of 218 feet. Four lots, of almost the same size as the one in question, extend to the north of it and these were conveyed some time ago. Houses have been erected on two of these lots.”

The Planning Board appealed on the basis that the conveyance “. . . is not in conformity with the Official Plan . . . Binbrook Section. The Official Plan states that one of the objects of the plan is to ‘maintain Binbrook as a rural township’.

“The evidence showed that areas called “Village Residential Areas” are allocated and it appears to be the intention of this plan to confine the subdivision of land into urban lots to these Village Residential Areas.”

Evidence was adduced that showed that a great many lots had been created outside of the Village Residential Areas. The Township was in an excellent position financially.

The Board decided that “. . . further studies of the future use of land in this Township are imperative.” *It appears that there is some conflict between the intention of the Official Plan, which states that this Township is to be maintained as a rural Township, and the approval of conveyances of lots which are much smaller than those used for rural or agricultural purposes.*

Appeal allowed: *Hamilton-Wentworth Planning Area Board and the Committee of Adjustment of the Township of Binbrook, O.M.B. P-89-65, 30 December, 1965.*

PART III

SEVERANCE

Chapter XIII

Joint Application
Severance Plus Variance

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Application, Joint — Severance and Erection of Dwellings on Substandard Lots — An appeal by the original applicant against the decision of the Committee of Adjustment refusing an application “. . . to permit the erection of two dwellings on Lot 1 . . . and to subdivide the said Lot 1 . . .”

“This would appear to be two applications: one presumably to permit the erection of dwellings on lots of a size or shape that will not permit compliance with all the requirements of the by-law and also an application under Section 26 of *The Planning Act* to permit the conveyance by metes and bounds of two parts of Lot 1. If the latter application needs to be made by reason of the provisions of a subdivision control by-law in the township then in my opinion notwithstanding the lack of all necessary references to the statute this application should be treated as made under that section as well as under Section 32b of *The Planning Act*. The record shows that the Planning Board of the Village of St. Clair Beach has expressed its opinion that the application might be granted if the dwellings to be constructed would in all respects comply with side yard, front yard and rear yard requirements of the zoning by-law and that the dwelling to be erected closest to Riverside Drive should be sited so as to face on Riverside Drive. The Planning Board made another stipulation that each of the lots in question would comply with the frontage and area requirements of the zoning by-law, that is to say, that each lot would have at least a 66 foot frontage and a minimum area of 7,500 square feet.

“The last stipulation of the Planning Board could not be met since one of the lots would be slightly smaller than the minimum area of 7,500 square feet provided in the by-law. In my opinion if all the other requirements of the by-law can be met then the application for severance and the application for locating one building on each part of the lot after severance should be granted if substantial compliance with the side yard, front yard and rear yard requirements of the by-law can be achieved, with the further condition that the dwelling to be erected on the northerly parcel should be sited so as to face Riverside Drive.

“It will be for counsel to confer and determine the extent to which these requirements can be met.”

Fasam, Bertha, and the Committee of Adjustment of the Village of St. Clair Beach, O.M.B. P-2127-66, 9th December, 1966.

Application for consent resulting in variance — Companion application for variance required — An appeal by the city against a decision of the Committee granting upon condition an application for a severance.

“The applicants to the Committee of Adjustment sought to sever a parcel of land from the balance of the applicants’ holding in a manner which is not relevant for the purposes of this report.

“By-law 1967-121 of the City of Peterborough affects the subject lands and *inter alia* requires a minimum lot frontage of 330 feet. If the consent sought herein were granted the severed parcel of land would not comply with these provisions of the by-law and accordingly would be a variance for which an application for authorization of such variance should also have been made by the applicants to the Committee as a companion application to that for the consent severance.

“It has been said in regard to similar matters in the past the Board will not be a party to any action which would result in a breach of a municipality’s by-law unless the Board has before it an application brought in the proper manner for an approval or authorization of non-compliance with the by-law where so permitted by law.”

Appeal allowed: *Application to Committee dismissed: Peterborough, City of, and the Committee of Adjustment of the City of Peterborough re an application by David Wilson and Harold Wilson, O.M.B. P-8884-69, 27th June, 1969.*

Application, Joint, for Variance and Conveyance — Property not in Area of Sub-Division Control — Possibility that granting of Minor Variance influenced by Conditions attached to Consent — An appeal by an objector against a decision of the Committee of Adjustment granting an application, subject to certain conditions, which would have the effect of authorizing a minor variance on the northern portion of the subject property and for a consent to the conveyance of the southern portion of the lot.

The application made to the Committee of Adjustment was “to maintain existing dwelling having a minimum rear yard setback of 13.76 ft. in lieu of 25 ft. required by the Zoning By-law and to create a building lot with a frontage on Bayview Avenue of 70.68 ft., rear width of 70 ft. Northern depth 126.17 ft., Southern depth 115.96 ft. Total area of new subdivided lot, 8470 sq. ft.”

“The application was granted by the Committee subject to certain conditions and it would appear from the nature of some of those conditions and the reference “newly created lot” in condition numbered 4 that the Committee was intending to grant the application in total rather than the variance only.

“At the present time the subject lot fronts on Highland Crescent and the dwelling thereon also faces that street. If the southern portion is conveyed the side of the lot abutting Highland Crescent would become flankage and both the northern and southern portions would be deemed to front on Bayview Avenue. Moreover, that which is now the westerly side yard, measuring 13.76 feet at its narrowest point, for the existing dwelling on the northern portion would become the rear yard for which the by-law requirement is 25 feet.”

“The subject property is not within an area of subdivision control, and accordingly the Committee of Adjustment lacked authority to give consent to the conveyance and to impose conditions under subsection 9a of section 32b of *The Planning Act*. It is not possible to determine from the Committee’s decision whether its authorization of the variance was influenced by the attachment of conditions to a conveyance.”

“Without any commitment to convey the land there is no variance from the by-law to be authorized for *the subject parcel* which meets all the requirements.”

“For these reasons I would allow the appeal and set aside the decision of the Committee of Adjustment without prejudice to a new application for authorization of a minor variance in respect of the northern portion of the subject property provided that evidence be given at that time of an agreement having been entered into to convey the southern portion conditional upon the variance being granted with respect to the northern portion of the property.”

Appeal allowed: *Millar, Lorne Percy, and others and the Committee of Adjustment of the Borough of North York, re application by George W. Ferrier, O.M.B. P-6056-68, 28th August, 1968.*

Three applications with respect to one property — Severance and minor variance — An appeal by the original applicant against three decisions of the Committee with respect to one parcel of land having a frontage of 264 feet with an average depth of 203 feet and an area of 1.214 acres.

“One appeal deals with an application for a severance and the other two are for variances. Since the appeals are with respect to one parcel of land, they were heard together.

“The land in question is zoned R3, which permits a maximum of 8 dwelling units in a single multiple dwelling. The original application to the Committee of Adjustment dealt with the erection of four buildings, each having 8

dwelling units as indicated by Exhibit No. 4 filed. This required the severances applied for as well as the variances referred to above.

“However, at the hearing, the applicants’ sole witness Mr. Uno Prii, Architect, spoke unfavourably of the original plan placed before the Committee of Adjustment and introduced a new proposal filed as Exhibit No. 5 for which he expressed strong preference.”

His evidence was that whereas the previous plan showed some of the buildings too close together and some requiring variances from the by-law, the new proposal has ample separation between the buildings and would have proper landscaping and tree planting.

The evidence indicated that there was a steep rise from the south-west corner of Queen and Palmer Streets easterly along Palmer Street, and that in addition there was a grade, northward on Queen Street. The impact of the topography on the traffic flow appears to be serious, and especially so when related to 32 new dwelling units.

Professor Norman Pearson’s evidence indicates that the neighbourhood surrounding the subject land consists mostly of single family dwellings with some exceptions where large houses were converted. His evidence was that the most appropriate use of the subject land was for single family development in keeping with the general character of the neighbourhood. This opinion was shared by the Director of Planning for the City of Guelph, who gave evidence that the Planning Department did not recommend the approval of the severances and variances applied for. However, the land use designation is not a question in the application before the Board.

Counsel for the applicants expressed their willingness to accept either of the proposals — Exhibit No. 4 or Exhibit No. 5. Because of the unfavourable evidence adduced by the applicants’ witness to the proposal in Exhibit No. 4, the Board also rejects the appeal. With regard to the second proposal (Exhibit No. 5), granting the severances required would necessitate a further application for variance to permit two buildings on one lot. Since no application for this variance has been made, the Board dismisses the appeal.

Applications dismissed: *Mencarelli, Mario, and Frank Santini and the Committee of Adjustment of the City of Guelph, O.M.B. R-2495-70, R-2496-70 and R-2497-70, 26th November, 1970.*

Chapter XIV

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Agricultural Use — Nursery — Must Comply With Minimum Lot Area For

— The subject property has an area of 3 acres. The appellant who does not own any adjoining lands wishes to sell the property and the prospective purchaser plans to erect a dwelling on it and to operate a nursery as well.

“The zoning of the area is “A” — agricultural which requires a *minimum lot area of 10 acres for agricultural uses* and an area of 20,000 square feet for residential uses.”

The Board agreed with the decision of the Committee that “the proposal does not agree with the requirements of the zoning by-law, which requires 10 acres and the subject property is 3 acres in area.”

Appeal dismissed: *Lanooy, Cornelius M., and the Committee of Adjustment of the Township of West Flamborough, O.M.B. N-9917-65, 22nd October, 1965.*

Farmhouse — Disposal of — Severance — An appeal by the original applicant against a decision of the Committee, given without reasons, refusing an application for severance.

“Mr. Schumacher purchased a farm in 1959 of some 150 acres on which was located a farm house and a large modern dairy barn. Subsequently he purchased two adjoining parcels of land one of 30 acres and the other 100 acres. The latter parcel was a complete farm and as such includes an 8 room frame farm house as well as an old barn. This gave the appellant a total holding of 280 acres more or less.

“The evidence indicates that the frame farm house has been occupied by Mr. Schumacher and that the herdsman occupies the brick home on the original holding.

“Recently the appellant purchased 300 acres in the Township of Oro and is in the process of buying another 100 acres which will give him a farm of approximately 400 acres in that Township.

“It is the intention of the appellant to erect a modern home on the farm in the Township of Oro on which he intends to operate a buffalo ranch. He stated that he has no intention of selling the dairy farm located in Innisfil.

“An application was made to the Committee of Adjustment for a severance of a lot which would allow him to dispose of the farm home in which he has been living. The lot in question would have a frontage of 566 feet and a depth of 178 feet or an area of 2.3 acres more or less.

"The application was refused by the Committee of Adjustment, however no reasons were given in the decision for such refusal.

"Evidence adduced on behalf of the township indicated that severances have been granted for lots 100 feet by 150 feet or in the alternative a 2 acres parcel for what was termed an estate. It was also pointed out that an attempt is being made in applications of this nature to discourage strip development.

"In this particular instance, the lot proposed to be severed is actually in excess of the 2 acre requirement of an estate and the fact that the house already exists is placing no additional load on any services provided by the township.

Appeal allowed: *Schumacher, Engelbert, and the Committee of Adjustment of the Township of Innisfil, O.M.B. P-8239-69, 17th June, 1969.*

Farmhouse — Severance — Separation of Property from Farm — An appeal by the original applicant against the decision of the Committee dismissing an application for a conveyance of part of a parcel of land

"A farm property was sold by the then owner, Mr. C. Blake to Unsworth, the appellant herein. Unsworth, who has other property, has no need of the farm house on the property which he purchased from Blake, and Blake wishes to continue to live in it. An application for severance of a parcel with frontage of 100 feet and depth of 200 feet on which the house is situate, was made to the Committee of Adjustment which refused the application. The appeal to the Board is from this decision. It was proposed to sell this parcel containing the house to Blake and the applicant was willing to consent to a condition that no other severances would be granted from this lot for 10 or 15 years. It was argued that this would just have the effect of continuing an existing situation as far as occupancy was concerned.

"If the application were granted there would of course be no assurance that the subject parcel would not be resold to some other person and it is not necessary that Blake be the owner in order to continue living there. I was advised that this was the first application to the Committee for a severance in a rural area and a favourable decision would no doubt be looked upon as a precedent to encourage others and so tend to defeat the underlying principles of good planning which should guide the development of the township."

Appeal dismissed: *Unsworth, George and Pearl Unsworth and the Committee of Adjustment of the Township of Sombra, O.M.B. P-1589-66, 29th March, 1967.*

Farmhouse — Parcel upon which Erected — Separation from Farm — Validity of Regulation — An appeal by the original applicant against the decision of the Committee dismissing an application for a consent to the conveyance of a small parcel of land from a parcel of 69 acres.

This land is farmed and there is one farmhouse and a garage on it. The property is serviced by a two inch watermain and electric power is available. "The existing farmhouse is some 16 years old and has been occupied by the appellant who now finds that it is inadequate for his family and consequently wishes to erect a new home to the east of the existing dwelling. He would sell the existing house on a parcel of land with a width of 100 feet by a depth of 150 feet."

The Committee refused the application, giving as its reason:

"This type of severance would only apply if the farm were sold or by reason of age or disability the owner could no longer carry on the business of a farm."

"The evidence for the Township showed that the zoning of this land is Agricultural. This agricultural use zone does not include dwellings of an urban or suburban nature as permitted uses. Additional dwellings, on a farm, are a permitted use in this type of use zone but these must be for the housing of persons engaged in the operation of the farm. These regulations would permit this appellant to construct a new dwelling for his own use as he plans, but apparently would not permit the sale of the existing buildings."

"The evidence for the municipality also showed that studies have been completed as a step in the preparation of an official plan. These studies did not suggest any different land use regulations for this area than are in effect at the present time. In short, the municipality, maintains that rural uses are the only proper uses for this area now and for some time in the future."

The Board decided that "I do not believe that the appellant adduced evidence to show that these regulations are unreasonable and improper for these lands."

Appeal denied: *Bordeaux Farms Limited and the Committee of Adjustment of the Township of Niagara, O.M.B. P-4403-67, 30th January, 1968.*

Housing — Residential Area Not Suitable For — Erection of Dwelling in Agricultural Area — An application was made for the approval of the conveyance of a lot 100' x 200' to be used for a dwelling in an agricultural area beyond the limits of the "Village Residential" area. Application was supported by County Health Unit. Application approved by Committee of Adjustment.

Area Planning Board appealed the decision of the Committee. The principal reason for the appeal was the desire to maintain the intent of the official plan.

Evidence was introduced by the applicant that the "Village Residential" area was not suitable for the erection of dwellings. The subject land was suitable for housing.

The Board commented that a re-study of the land use allocations might be advisable to determine whether or not the subject lands should be included in a "Village Residential" area and the official plan amended accordingly.

Appeal granted: *Hamilton Wentworth Planning Area Board and the Committee of Adjustment for the Township of West Flamborough, O.M.B. N-9966-65, 27th October, 1965.*

Housing — Non-Farm — Confined to Areas Surrounding Existing Hamlets — Desire to Live in Rural Surroundings — An appeal by the original applicant against a decision of the Committee dismissing an application for a severance.

The applicant based his appeal on the following points:

"1. That the land in question was suitable for the erection of a dwelling and that the soil was gravelly and ideally suited for the operation of a septic tank; and

"2. The development of this lot for housing would not interfere with land used for agricultural purposes as it was partly in bush and had never been used for the growing of crops; and

"3. The lot which he wishes to separate from his holdings has an area of 4.2 acres, not the area referred to in the file; and

"4. All of the children who attend school from his area and from the Carlisle area attend the same school at Carlisle; and

"5. In any planning programme for a municipality such as this provision should be made for people who wish to live in rural surroundings without the necessity of living on a *bona fide* farm."

Evidence for the municipality dealt with the need to prevent the construction of housing on smaller lots scattered throughout the township and stated "the intent of the official plan is to confine such new housing to areas surrounding existing hamlets which are called settlement area . . . The policy of the official plan beyond the settlement areas is not to permit housing unless it would house persons directly connected with the operation of the farm on which it is located."

The Board decided that “. . . the action of the council in regulating development in this fashion is not only reasonable but necessary in this type of rural township” and further stated “. . . it would appear that the land use control procedure that is being followed is well suited to the needs of the township . . .”

Appeal dismissed: *Neeb, Wayne, and the Committee of Adjustment of the Township of East Flamborough, O.M.B. P-1762-66, 25th November, 1966.*

Severance — Heavy demand for urban growth in rural municipality — Appeal by Minister — Concern arising from large number of consents — Appeals by the Honourable the Minister of Municipal Affairs with respect to certain decisions of the Committee.

“The evidence in this matter shows that all of the lands which are the subject of these appeals are parts of Township Lot 15 in Concessions 3 and 4 and that the proposed lots abut on the east side of the Township road shown on the plan which was filed as Exhibit 1. This Township road is an extension of Vincent Street in the City of Barrie which is some three miles to the south. The evidence also showed that the Minister of Municipal Affairs *made this appeal because of concern arising from the number of consents to conveyances which were being given by the Committee of Adjustment of this Township.* The total number of consents granted were given as 52 in the year 1965, 42 in the year 1966, 47 in the year 1967, 148 in the year 1968 and 34 in the first three months of the year 1969. The evidence for the Minister showed, that in his opinion, growth on lots of this size in a township which is predominantly rural in character could sooner or later produce a type of development which would of necessity have to be annexed to the City of Barrie so that city services would be available to serve such development. These services do not exist in Vespra Township. Such an alteration in municipal boundaries would upset the calculations upon which the Official Plan of the City of Barrie is based.

“It was argued for the Township that the *evidence for the appellant was not necessarily valid for Vespra Township as it was based on conditions observed throughout the whole of the Province of Ontario.* On the other hand there was no evidence to show that Vespra would fare any differently from any other rural township which allows this kind of growth. The Township Council is now considering the advisability of preparing an overall official plan and restricted area by-law to direct the land use development of the Township. A restricted area by-law that is presently in effect in this part of the township does not contain any control over land uses. *It is a siting by-law which regulates the size of lots and the positions of buildings on such lots but does not*

regulate the type of use which may be carried on, on any lot. From the evidence it appears that there is a continuing demand for lots in the township and the evidence of the Secretary-Treasurer of the Committee of Adjustment indicated that many enquiries as to severances were made to him and that all of the enquiries do not result in applications to the Committee of Adjustment. The figures quoted above could be increased by some 25 %, if all such enquiries resulted in separations. A rural municipality which is experiencing this kind of demand for urban growth should, it would seem, undertake studies to determine the effect of such growth on the economy of the municipality, to determine the number of such non-rural units that can be safely absorbed in the economy and to determine where such units should be allowed to locate. Whether or not these studies are to take the form of an official plan and a restricted area by-law for the township is a decision that the municipal council must of necessity make. However the Board is of the opinion that the council should be aware of the effect of this type of development on the community and from the evidence the Board does not believe that it was shown that such studies have been carried out. For this reason the Board is of the opinion that the consents which are now before the Board are premature and these three appeals are allowed.

Appeal allowed: *Minister of Municipal Affairs and the Committee of Adjustment of the Township of Vespra, re an application by Ron Kunce and two applications by Edgar C. Garner, O.M.B. P-7871-68, P-7872-68 and P-7873-68, 29th April, 1969.*

Severance of Large Parcels — Land used for Farming Purposes — Interference with Property Rights — An appeal by the Corporation of the Township against a decision of the Committee granting an application to sever a parcel approximately 145 acres into two or more or less equal parcels.

“The Township Council appealed against this decision. The basis of its appeal is that it does not feel that severance should be granted in circumstances such as these unless it can be shown that the land will be used for farming purposes. There may be merit in this position although I can see a good deal of difficulty in ensuring that once the severance has been granted, the land will continue to be used for farming purposes.

“However, it seems to me that to seek to prevent a man owning 145 acres from severing it into two approximately equal parcels is too drastic an interference with his property rights and I question whether such a severance into such large parcels interferes very much with any planning principle.

"I would therefore recommend that the appeal be dismissed. I would however not want this to be taken as a precedent for an indiscriminate granting of severances. I think in this case the Committee considered the matter very carefully and concluded the severance should be granted and I think all such applications should have to be dealt with on a similar basis."

Appeal dismissed: *Valley East, Township of, and the Committee of Adjustment of the Township of Valley East, re an application by Leopold Lauzon, O.M.B. R-1858-70, 28th July, 1970.*

Severance — Reduction of Parcel to Less Than Economic Unit — Present Use Considered — An appeal by the owner of a parcel of 44½ acres of land against the dismissal of an application for permission to convey part of this parcel containing 37 acres. The owner proposed to retain 7½ acres on which buildings are located. The parcel of 37 acres had 20 acres in grapes and the balance open.

"The prospective purchaser is a farmer who own 27 acres and grows grain thereon for the raising of 700 pigs. It is his expressed intention to retain the grape vines on the subject parcel and to grow grain on the remainder for use in his present pig-raising operations for which he now lacks sufficient land. He has attempted to buy the whole of the property but has been able only to acquire the first right of refusal with respect to the remaining 7½ acres."

"The owner's reason for retaining as much as 7½ acres is to keep sufficient land for a market garden operation such as the growing of corn and tomatoes. On the other hand, the retention of as much as 10 acres would cut into the vineyard and leave him about 20 rows of grapes which would not yield enough grapes for an economical operation.

"The appeal is opposed by the Township on the ground that the property should not be reduced in size, that it is an economic unit as it now exists, and that if the conveyance is permitted, the remainder would be less than an economic unit. No evidence was given in respect of the characteristics such as location, climate, soil, size or other features which might be helpful in determining what is or is not an economic unit in this area. Acreage required would vary also according to the type of operation carried on.

"It should not be overlooked that Mr. Malloy could convey 34½ acres without any necessity of seeking the permission of the Committee of Adjustment or this Board. The only question is whether conveyance of the additional 2½ acres is reasonable and does not affect adversely the public interest."

The Board decided that "there was no clear evidence that this conveyance would be contrary to the public interest. On the other hand this acreage is not being fully utilized at the present time and if conveyed would be complementary to and increase the efficiency of the farming operation being conducted on the lands opposite."

Appeal allowed: *Malloy, John, and the Committee of Adjustment of the Township of Niagara, O.M.B. P-433-65, 14 April, 1966.*

Severance — Evidence concerning proposed use — Information vital in order for Board to exercise discretionary power — An appeal by the original applicant against the decision of the Committee dismissing an application for a severance to divide in half a parcel of land containing 100 acres. Evidence indicated that "there are a number of farms of a similar size surrounding the subject site, and there are a number of residential buildings on smaller lots as well which have sprung up over the last few years . . ."

"The applicant and his two sons operate a vegetable garden business and the owner stated in his evidence that due to the lack of sufficient funds he is not able to purchase the necessary equipment to make the operation successful. At his age of 57 years, he does not wish to go into debt by means of a mortgage or otherwise to obtain the necessary capital. For these reasons, he is proposing to sell one-half of his holdings and pursuant to this desire he has received an offer to purchase on the severed parcel from one, Califanno.

"The municipality opposes the appeal on the basis that the official plan which has now been approved by the Minister designates these lands as agricultural and indicates an intention to retain the agricultural nature of the area. There is presently no by-law regulating the use of the subject land although the municipality indicated that a planning study leading to such a by-law is presently in progress. It is expected that a report from the planning consultants will be available to council this month. It is always a difficult question to determine a size for a parcel of land which would constitute a suitable agricultural unit. The undisputed evidence of the applicant was that 50 acres was sufficient in size for a vegetable garden business as he proposes, but on the other hand, it would not be large enough for a dairy business. However, I am able to base my recommendation to the Board on this matter on another ground.

“The municipality indicated a serious concern regarding the use that might be made of these lands. There was no evidence before the Board on the proposed use and in fact Mr. Yake admitted that he had no knowledge concerning the intention of the purchaser. In order for the Board to exercise its discretionary power in granting a severance, such information is vital for the Board’s consideration.”

Appeal dismissed: Yake, George, and Constance Yake and the Committee of Adjustment of the Township of Whitchurch, O.M.B. R664-69, 17th February, 1970.

Severance — Assistance of Farmer’s Daughter — Accessory Use — Inter-Family Transaction — An appeal by the original appellant against the decision of the Committee dismissing an application to convey a lot having a depth of 200 feet and frontage of 100 feet on a paved county road, to the daughter of the appellant. The daughter and her husband wish to construct a single family dwelling on the premises. The severance would leave the appellant with 72 acres.

The appellant indicated that “due to the age of his wife and himself they wish to have their daughter and her husband living near them because of the part-time assistance they can give during the busier farming seasons; because it is difficult . . . to take care of the farm house alone and she needs the assistance of her daughter; and also they do not wish the family to be separated. The evidence that the daughter helps her mother with the general housekeeping on the farm and assists in the evenings and on week-ends with the gardening during the busy seasons was not disputed. The daughter is presently employed in an office but intends to terminate her employment this spring if they are able to proceed with construction of a dwelling on this lot. It was also stated that no price was involved as the conveyance was to be a gift to the daughter. The report of the inspector for the Wentworth County Health Unit indicated that drainage was satisfactory and there was no reason on public health grounds why the proposed lot should not be approved for use as a residential dwelling.” The application was opposed by W. C. Nicholl of the Hamilton-Wentworth Planning Area Board on the grounds that it did not conform to the official plan, which designates this area as “Rural” which is defined as meaning “that the predominate use of the land shall be for agricultural purposes”. “The Official Plan also states, however, that the rural category includes “residential development in accordance with clause (c) (4)” which reads as follows:

“(4) The division of land pursuant to Section 26 of *The Planning Act* (“consents” or “separations”) is contrary to the intent and purpose of this plan, save and except in any of the following cases and provided that such division is in keeping with the character of the rural area and is on a limited scale only:

- (i) for agricultural purposes
- (ii) inter-family sales
- (iii) for any development included within the definition of “Rural”.

The Board stated “In my opinion, the conveyance sought here falls within the exception mentioned above as it is an inter-family transaction.”

Under the zoning by-law, which had been given temporary approval by the Board, the lands are in an Agricultural Zone for which the permitted uses are “agricultural uses and buildings, and uses and buildings accessory thereto”.

“According to the evidence . . . only one dwelling per farm is permitted under the zoning by-law because a parcel of land (a farm) is deemed to be one lot. This creates a problem since a farmer cannot erect a separate dwelling on the property for a hired man or married son or daughter employed full-time or part-time on the farm. It appears that the only solution for this is to obtain a severance of a lot upon which the second dwelling is erected. Although in separate ownership the lot and dwelling are then considered to be accessory to the agricultural use on the farm property.”

Evidence was given that “severances have been granted on several occasions for sons and daughters who assisted on the farm.”

The Board decided that “. . . The operation and maintenance of a farm house is a part of the farm operations and the assistance in that respect as well as the part-time assistance in the gardening operations should entitle the applicants to the same consideration as others have received . . . and the granting of this application would appear to be not inconsistent with the policy and practice . . . with respect to the interpretation of what is meant by “accessory” use in the by-law.

Appeal Allowed: *Bobor, Emerich, and Elizabeth Bobor and the Committee of Adjustment of the Township of Saltfleet, O.M.B. P-460-65, 3 May, 1966.*

Severance — Hardship created by Committee’s Refusal — An appeal by the original applicant against a decision of the Committee dismissing an application for a severance.

“The appellant purchased the subject lands, being a 10-acre parcel, in 1962 at a time when the township’s subdivision control by-law affected this property. This property was unimproved until the summer of 1968 when the son of the appellant having obtained a building permit in June of 1968 commenced to erect a residence and at the date of the hearing was about half completed. It was the intention of the son and apparently also of the appellant that a 2½-acre parcel of land surrounding the house would be conveyed by the appellant to his son. The Committee of Adjustment of the township however frustrated this intention by refusing to grant a consent to the severance of the smaller parcel of land from the larger.

“Amendment Number 4 to the municipality’s official plan approved by the Minister in 1967 instituted a policy in regard to residential development in agriculturally zoned lands which includes the subject property. This policy is opposed to scattered residential development and ribbon development in agricultural areas and it further states that in regard to residential development infilling should be encouraged and residential development should occur in the vicinity of existing hamlets and urban areas. Should this appeal be allowed this policy would be contravened. Further, it is quite possible and indeed highly likely that some time in the future the appellant or his successor in title of the remaining 7½-acre parcel of land would desire to build a residence with the result that two homes would exist where none had before.

“I realize that in the circumstances herein an apparent hardship exists but only by reason of the actions of the appellant’s son and not because of any improper action by the municipality. Notwithstanding the circumstances herein I feel that this policy should prevail as it relates to the proper, orderly and economic development of the rural areas of the municipality.”

Appeal dismissed: *Hyrchiuk, Michael, and the Committee of Adjustment of the Township of Darlington, O.M.B. P-7255-68, 17th January, 1969.*

Severance — Burdensome taxes — Second application in short space of time — An appeal by the original applicant against a decision of the Committee dismissing a request for severance of a parcel of land.

“This is the second application made in a short space of time with respect to the severance of the subject parcel but in justice to the appellant it should be noted that upon seeking advice he desired to change the reasons advanced by the first application and was prevented by personal misfortune from attending the earlier hearing at which the Board without hearing any evidence

dismissed the appeal and awarded costs against the appellant. For these reasons I concluded that the appellant was entitled to receive full consideration on this appeal and the hearing was conducted as though no previous application had been made.

“The appellant has owned and has resided for 10 years on a veteran’s land parcel on the first concession west of Don Mills Road and just south of Aurora Sideroad. Depending on what might be required for road dedication the parcel proposed to be severed would approach one and one-half acres in size and leave close to an acre for his own residence.

“The only reason advanced by the appellant for this severance was the hope of relief from burdensome taxes and the assertion that there are now several small private holdings in the area. He admitted that, except for one small holding north of him, he is surrounded by farm properties and that there are no services available or planned.

“For the township, the clerk produced as Exhibit 2 a draft official plan which amply demonstrates the desire of the township to retain a rural atmosphere and to encourage all residential development in the vicinity of hamlets. The reasons advanced by the appellant, in my opinion, offered the Board no jurisdiction for concluding that consent to a conveyance for residential use of these lands would be warranted . . .”

Appeal dismissed: *Scott, E. A., and the Committee of Adjustment of the Township of Whitchurch, O.M.B. P-6267-68, 29th October, 1968.*

Severance — Lands Separated by Road — Separate Parcels — The lands in question lay on both sides of a road. The lands to the east had an area of some 140 acres and the lands on the westerly side of the road an area of 16 acres. The area was designated by the town as an area of subdivision control and zoned as “Agricultural”.

Owner wished to create two building lots on the 16 acre parcel. The Committee rejected the application on the grounds that the “proposed division of land is contrary to the policy laid down by the Official Plan of the Town of Oakville, which states that an owner must *have 50 acres of land contained in a single parcel before a separation from that parcel would be permitted.*” On appeal to the Board by a proposed purchaser of a lot which is part of the subject lands, evidence showed that the property was operated as a farm and that the land on the west was used for pasture. Appellant argued that “the total

holding of 156 acres should be considered as one property, and that the official plan allows the creation of two lots as the total area exceeds 100 acres.

“Counsel for the Committee argued that the land in question was a property having an area of less than 50 acres and the Committee could not approve of the application as the proposed separation was not in conformity with the intent of the Official Plan.”

Appeal not allowed: *Leslie, T. A., and the Committee of Adjustment of the Town of Oakville, O.M.B. N-9790-65, 22nd October, 1965.*

Severance — Infilling — Gross Violation of Subdivision By-law — An appeal by the original applicant against the decision of the Committee dismissing an application for a severance.

“According . . . to the evidence adduced the appellant had sold the north-westerly corner of his farm . . . to his son-in-law some seven years ago. This parcel has a frontage of about 165 feet on the . . . Concession Road by a depth of 300 feet and is flanked on the west by a county road. Three or four years ago he sold a second parcel lying several hundred feet east having a frontage of 145 feet on the same concession road and the same 300 foot depth.

“About two years ago he sold a third parcel which has a frontage of 580 feet on the same concession road and to the same depth. This parcel abuts on the west side of the second parcel.

“Lying between the first and third parcels is an unsold parcel of undetermined width but apparently having a frontage of 500 feet more or less.

“The appellant now wishes to sell the easterly 350 feet of this parcel and to transfer the remaining 150 feet more or less to his son-in-law to be joined to the parcel which the latter already owns. There was some indication that permission for such a severance was granted several months ago but the transaction has not yet been completed.

“The township has a by-law of subdivision control passed in 1956 or 1957 which would be at an earlier date than any of the transfers mentioned above. The appellant is fully aware of the intent of this by-law but evidently is not in sympathy with it.”

The Board stated that “In my opinion the best that can be said for the appeal is that it would allow for infilling of the vacant frontage but even this con-

tention is very weak in view of the parcel lying between that which is the subject of this appeal and the parcel owned by the appellant's son-in-law, being still in the appellant's ownership. It is my further opinion that the Committee of Adjustment and its predecessors have been most lenient in granting the transfers that they have and it would be a gross violation of the intent of the by-law if any more were granted."

Appeal dismissed: *Yake, Wellington A., and the Committee of Adjustment of the Township of Uxbridge, O.M.B. P-1799-66, 6th January, 1967.*

Severance Refused — Expenses Incurred After Council's Approval — Reference By Minister — An application for consent to convey a parcel of land containing one and a half acres located on the south side of highway No. 7 about half way between the Village of Rockwood and the City of Guelph.

The application was referred to the Board by The Honourable the Minister of Municipal Affairs upon the request of counsel for the intended purchaser.

"The evidence was that the lot was well wooded containing some 30 hardwood trees which formed part of a large area of bush extending eastward from the proposed lot. For this reason it was not suitable to cultivate although the land to the west of the proposed lot, which also is in the ownership of the Keans, is cleared and cultivated. The total holding of the Keans was said to be 100 acres and this would be the first severance.

"The applicant has expended considerable effort and money towards securing the severance. After approaching the council with a plan of survey for a square lot containing the 1½ acres, council requested that he change the depth for planning reasons, which he did, and by resolution . . . on March 14, 1966, council agreed to the conveyance. An entrance permit was obtained from the Department of Highways, an approval of the lot under *The Veterans' Land Act* was obtained as was also the approval of the Ontario Hydro and the County Health Unit. To date the out of pocket expenses for surveying, plans, V.L.A., hydro, etc., including a deposit of \$500 on the lot, amount to around \$2,000 which would appear to be a complete loss if the severance is not obtained and the house — estimated to cost about \$20,000 — built. These expenses, exclusive of surveying, were incurred only after the council had indicated approval.

"No one appeared at the hearing in opposition to the application.

“From the point of view of both buyer and seller there is no doubt that the proposed location is a very desirable one and I am satisfied that Mr. Dudnick has acted in good faith throughout. Having secured all the necessary local approvals he felt he was safe in proceeding to the extent he did, relying on the fact that similar applications had heretofore been favourably dealt with. However natural this may be, there is a clear indication from the correspondence in the file that he had received warning that the first essential was the severance and since he did not take the necessary steps to find out if it would or would not be granted he has only himself to blame if he now finds himself in the position of having spent a considerable sum of money to no purpose.”

The Board decided: “In an application such as this where there is no objection on the part of any local authority or individual, I am satisfied to rely on the widespread experience of a large number of municipalities that strip development such as the evidence indicates has occurred here, and such as would be encouraged if this application were approved, is detrimental to the welfare of the municipality as a whole.”

“It was indicated that the township has engaged planning consultants who are now studying the township and will eventually produce plans and by-laws to govern the development of the area. It is to be expected that these will set some standards for the control of development such as is proposed here. Until such time as the township has these controls there is no protection for anyone. I do not believe that applications such as this should be approved . . .”

Application refused: *The Minister of Municipal Affairs. A reference by, re an application by Peter Dudnick, O.M.B. P-2070-66, 8th December, 1966.*

Severance Refused — Land treated separately for many years — Separately taxed — An appeal by the original applicant from a decision of the Committee refusing to grant an application for consent to the conveyance of a parcel of land. The applicant desires to sell a contiguous parcel of land “described as 9½ acres in the application to the Committee of Adjustment but subsequently to their decision as 12.382 acres.”

“On behalf of the appellant and purchasers, evidence was submitted and arguments presented to warrant the approval of the severance. It was asserted that although the severed property was contiguous to the remainder, *it had for many years been treated separately by deed description; was separately taxed; and was physically separated by a creek, swamp and fence.* The purchasers

stated that it was their intention to continue to use the parcel for pasture purposes and to erect a residential dwelling thereon. It was alleged that the transaction had been completed after receiving *misleading information from municipal officials* that there was no hindrance in accomplishing their purpose.

Neighbours appeared in support of the application. Counsel submitted that the utilization of this lot would be a continuation for farming purposes; represented an infilling; and was not contrary to the intent of the official plan.

“The municipality’s representatives are opposed to the application being approved because in their opinion *it represents strip development*, and the reason why the official plan was adopted and approved in June, 1969. It was stated that such position was consistent with the more recent attitude of the municipal council in limiting such severances. An implementing zoning by-law is now being processed. The property fronts on a poor gravelled road. The subject parcel is good farm land, and was farmed in conjunction with the home parcel for many years. It was submitted that there could be no assurance that the severed parcel would continue to be farmed or that there would be no demand for additional municipal services.

“I am of the opinion that the *appeal should be dismissed*. The Board should only deal with what was before the Committee of Adjustment which was a parcel of land being 9½ acres. I am of the opinion that what is proposed amounts to strip development and contrary to the declared policy statements in the Official Plan recently approved. There is a history of many land severances in the general area which the municipality by this enactment has shown it does not want to allow to continue. I can accept the fact that the purchasers are bitter about the situation apparently believing that nothing stood in their way, and that now recriminations are forthcoming. Be that as it may, the Board must consider the public as well as the private interest, and in these circumstances the fact that the transaction has been completed can have no bearing upon the merits of the application. Irrespective of the expressed intentions of the purchasers, the land severance once approved could be utilized for other purposes if not by the present purchasers, then by subsequent owners.”

Appeal dismissed: *Reynolds, Gerald, and the Committee of Adjustment of the Township of Innisfil, O.M.B. P-8848-69, 16th July, 1969.*

Chapter XV

Industrial Use — Severance

Hydro Right of Way Affecting Set-Back — Land Impractical for Heavy
Industrial Use — Possible Light Industrial Use 106

Severance — Appeal by Council — Committee Decision Upheld 107

Hydro Right Of Way Affecting Set-Back — Land Impractical For Heavy Industrial Use — Possible Light Industrial Use — An appeal by the township against the decision of the Committee granting an application for consent to convey part of a lot. The appeal was made on the premise that the severance contravenes the Zoning By-law and the Official Plan.

“The subject land, though zoned rural, cannot meet the frontage requirements for residential use.”

An exhibit filed showed the property containing 6.41 acres and an additional 82 acres in the same ownership to the south of the old New York Central Railroad right-of-way. “This easement of 80 feet has for the last two years been in the ownership of the Ontario Hydro Electric and in the opinion of the applicant it prejudices the use of the subject land industrially when the severance is considered in relation to the 500 foot set-back requirement for heavy industry.”

The Board stated “after hearing the evidence adduced and persuing the decision of the Committee of Adjustment, I am led to the irrevocable conclusion that its reason for approving the conveyance was based on an inadequate knowledge of the official plan and the industrial land use requirements of the Zoning By-law which would apply to these lands when wholly zoned to industrial use. In the first instance the official plan does not designate the subject lands as heavy industrial, but as is usual in such matters, the reference is merely to industrial. Out of this misunderstanding, an assumption was made by the Committee that if the lands were later zoned in conformity with what they believed would be heavy industrial Official Plan designation, the owner would have no depth upon which to erect an industrial building after the 500 foot setback required in the by-law was provided for. In actuality, the zoning by-law makes provision not only for heavy industrial use, but light industry as well, and the latter use provides for a minimum of 40 feet front yard and 75 feet when on the opposite side of the street there is located a residential zone.

“It is quite clear that a potential purchaser of these lands for light industrial uses would not be faced with the requirement of a 500 foot set-back, but one of considerably lesser dimensions leaving sufficient land in reserve north of the Hydro right-of-way to erect a building.

“The municipality has indicated its willingness to zone the subject land for light industrial use in conformity with the Official Plan at any time there is a demand for such property . . .”

Appeal allowed: Moore, Township of, and the Committee of Adjustment of the Township of Moore, P-541-65, 3 May, 1966.

Severance — Appeal by Council — Committee Decision Upheld — An appeal by the Town of Preston against the decision of the Committee granting upon conditions an application for the severance of a corner lot having a frontage of 150 feet on Eagle Street and a depth of 285 feet abutting Industrial Drive containing 0.981 acres. The lot does not offend against the zoning by-law in any way. The Committee granted the application subject to certain conditions which are not specifically part of this appeal.

“Industrial Drive is the main road leading into the industrial basin in which the land is situate and according to a traffic study just completed, Eagle Street will become a major traffic artery when the relocation of Highway Number 8 is completed, a change which is planned for the near future.”

“The evidence indicated that the council felt that a more desirable development would result if the whole of the parcel, 12 acres, were retained as one. At the present time the remaining 11 acres are under option.”

“In view of the fact that the proposed severance conforms in all respects to the requirements of the zoning by-law and there being no contention that the development of the area is in any way premature at this time, I am satisfied that the decision of the Committee is a proper one . . .”

Appeal dismissed: *Preston, Town of, and the Committee of Adjustment of the Town of Preston, re application by Preston Sand and Gravel Limited, O.M.B. P-5754-68, 27th June, 1968.*

Chapter XVI

Residential Use — Severance

Infilling Between Existing Lots in Designated Settlement Area — Future
Streets Considered — Plan of Subdivision Required 110

Increase in Run-off caused by erection of Dwelling — Aggravation of
Present Drainage Problem 111

Orderly Growth — Premature Development 112

Infilling Between Existing Lots in Designated Settlement Area — Future Streets Considered — Plan of Subdivision Required — An appeal by the County of Wentworth and by the original applicant against the decision of the Committee of Adjustment which approved the separation of one lot but not three as requested. The decision stated “. . . that no further separations from this holding should take place unless by means of a plan of subdivision.”

“The evidence showed that the appellant in these proceedings owned about 33 acres of land on the west side of Centre Road in the Hamlet of Carlisle. Centre Road is one of the main north-south routes in the area and also forms one of the principal streets in the hamlet. The file shows that the applicant had sold off three lots fronting on the west side of Centre Road some years ago before a by-law of subdivision control was applied to these lands. In selling off the lots this owner retained a 66 foot strip intended to be used if necessary for a street to give access to the lands which lie behind the frontage. The owner now wishes to sell a further three parcels or lots which are to the south of those sold before and there is a strip of land approximately 100 feet in width between these lots. This extends from the Tregunno home and farm buildings to the west side of Centre Road. The lots in question would have an area of approximately 15,400 square feet and if sold would be used for the erection of dwellings.

“The official plan which affects these lands requires a future right-of-way for Centre Road of 100 feet. Its present width is 66 feet.

“The evidence showed that the township in an effort to control the type and location of future land use in the official plan has designated areas surrounding the existing hamlets as settlement areas. The intent of the official plan is to channel future urban growth into such settlement areas rather than to permit it in the agricultural areas beyond. Mr. Tregunno’s property is practically in the centre of one of these settlement areas at Carlisle. It was argued on behalf of Mr. Tregunno that the action of the Committee of Adjustment in requiring a plan of subdivision was unreasonable as the proposed lots were merely an infilling between existing lots of similar characteristics. It was also maintained that it was unreasonable to put an owner to the expense of preparing and having registered a plan of subdivision under these circumstances. It was also contended on behalf of the owner that the development had occurred in such a way along his frontage as to leave three large areas which could be used for future streets to give access to streets which would serve the lands in the rear if it were ever decided to subdivide these and it was stated that the owner has no intention of proceeding with the subdivision of the lands in the rear. The

evidence for the municipality indicated that it was felt desirable to now secure a plan of subdivision which would reveal topographic and other information which would permit the planning authorities to determine the feasibility of constructing future streets into the rear of this property. If a plan of subdivision is registered an owner is required to dedicate land as specified in section 28 (5) (a) of *The Planning Act*, R.S.O. 1960, c. 296. In addition to this the owner is required to deposit a sum of \$300 per lot as a capital improvement fund and where lands abut on an important street land would also be required for road widening.

“The owner stated that he would be prepared to give a 10 foot strip for the widening of Centre Road. However, the official plan of the municipality apparently requires a future right-of-way width of 100 feet. It would seem that a dedication of 10 feet added to the present right-of-way and presuming an equal dedication on the opposite side would not produce a right-of-way in conformity with the requirements of the official plan.”

The Board decided that the controls referred to appeared to be reasonable to control the future development of the township and commented further that while the owner argued that the existing frontage of his property contained sufficient land which would be held by him to provide for future streets, the township and the owner had no evidence to indicate that such land reserved for future streets would be adequate.

“I believe that the policy of the municipality in requiring plans of subdivision in connection with the creation of lots, such as happened in this case, is reasonable.”

Appeal dismissed: *Wentworth, County of, and David Tregunno and the Committee of Adjustment of the Township of East Flamborough, O.M.B. P-1753-66, 30th November, 1966.*

Increase in Run-off caused by erection of Dwelling — Aggravation of Present Drainage Problem — An appeal by one of the original applicants against a decision of the Committee dismissing an application for a severance of a parcel of land, registered on a plan known as Clearview Estates Survey. From the evidence it appeared that while this proposed lot would be smaller than some of the lots in the survey, it would also be larger than some of the lots in the immediate area. It was also shown by the evidence that the *proposed lot exceeds the minimums required by the zoning by-law which regulates this part of the township.*

“The objections filed at the hearing related principally to the fears that *present drainage problems would be aggravated* and that the addition of even one septic tank would have an effect on the drainage conditions in the area and that the character of this part of the subdivision would be adversely affected because of the increase in intensity of use which would result from erecting a house on a lot of the size that is proposed.”

“I have some doubts as to the suitability of the land for the purpose intended. *The proposed lot exceeds the standards laid down* in the zoning by-law and it would also appear that the size of this lot would be in keeping with the area as there are a number of lots which are smaller, in this part of the subdivision. I am concerned however about the evidence respecting drainage problems in the area particularly the evidence of one of the objectors, Mr. David Mount, who is a registered professional engineer and who stated that the erection of a dwelling on this lot would increase run-off from the lot in question by some 51 per cent. Mr. Mount also raised some objection to the proposed installation of disposal beds, firstly, for the proposed lot and secondly, for the land on which the existing house would remain as the tile bed for this property now encroaches on the lot which it is proposed to create. However, Mr. Fines stated that he had secured advice from a building contractor who advised him that the two disposal beds could be arranged each on its appropriate lot and I note that there is a letter on file from the Medical Officer of Health which approves the application. Because of the evidence as to drainage in the area I do not feel that I can recommend that the appeal be allowed . . .”

Appeal dismissed: *Fines, Wilbert W., and the Committee of Adjustment of the Township of Lancaster re application by Wilbert W. Fines and Elinor E. Fines, O.M.B. P-5497-68, 16th July, 1968.*

Orderly Growth — Premature Development — An appeal by the original applicant against a decision of the Committee dismissing an application for consent to the conveyance of two parcels of land and a request for a variance from the requirements of the by-law to permit the erection of one single family residence on each of the lots to be created.

“It should be said here that the applicant has previously submitted the matter to the Planning Board and municipal council by way of a by-law amendment application and it was refused. The subject lands are only part of a much larger holding the bulk of which is undeveloped due no doubt to the lack of municipal sewers in the immediate area. While it is quite true that in the past development in the general area has taken place on the basis of service by

septic tanks on lots of great depth, it was the evidence of the principal planner for the Scarborough Planning Board that sewers are now installed 400 feet north of Sheppard Avenue and as a planner he is of the opinion that *septic tank installation should not be permitted with sewers, as he puts it, just around the corner*. He is also of the opinion that the whole of the lands should be developed at one time rather than the piecemeal development proposed. The possibility exists, he testified, that, if finances permit, the demands of development may bring sewers to the subject area in 1968 or 1969, and perhaps sooner if the anticipated development of higher density proceeds south of the holdings of the appellant. In his opinion a reasonable possibility exists that all of the lands held by the appellant may be put to a more intensive development than single family housing after appropriate studies are made."

"The Committee of Adjustment in dealing with the matter before it states quite clearly in the decisions rendered that services for these lands are available in the foreseeable future and their development upon septic tank servicing is premature."

The Board stated "Despite all of the learned dissertation upon the subject which I do not find necessary to reiterate, the Committee of Adjustment, in basing its refusal mainly upon the fact that the application is premature in that a proper municipal sewer service can in the reasonable future be made available to these lands, acted properly and within the concept as set forth in section 28, subsection 4(b) and (h). Surely the whole purpose of *The Planning Act* is to provide for the orderly growth and development of the municipalities within the Province upon proper and efficient municipal services wherever this ideal is capable of attainment."

Appeals dismissed: *Wilson, Allan C., (In Trust) and the Committee of Adjustment of the Borough of Scarborough, O.M.B. P-5627-68 and P-5628-68, 30th May, 1968.*

Chapter XVII

Resort Property — Severance

Reservation of Walkway to Provide Access to Beach — Development of
Other lands considered 116

Uncertainty surrounding Development of Land — Plan of Subdivision
Required 117

Reservation of Walkway to Provide Access to Beach — Development of Other Lands Considered — An appeal against the decision of the Committee dismissing an application for a conveyance of part of a parcel of land.

The subject parcel has dimensions of 120 ft. in width and a depth of 236 ft. on one side and 244 ft. on the other. The property has frontage on Lake Simcoe. The application to the Committee was made necessary by the fact the owner wished to reserve a 7 ft. walkway on the south side of the parcel to provide access to the beach for potential users of the larger block to the rear, also owned by the applicant. "At the present time there is situate on the latter parcel a small cottage. The land for which consent is sought, however, contains thereon a farm residence described and used as a summer hotel, and certain cabins all of which have been used commercially on the site for many years. At the present time one reading has been given to a by-law of the corporation which would zone the subject and others lands for residential use only."

"Vigorous opposition to the appeal was raised by many ratepayers residing in the summer cottage community on the beach. It is their evidence that except for the present commercial use on the parcel for which conveyance is sought all other lands are residentially used by the individual owners. There is great concern that the establishment of the 7 ft. walkway would provide access from the larger block to the rear thus interfering with the residential amenities presently enjoyed by the cottagers who possess properties ranging in value from \$10,000 to \$25,000."

The Board decided that "the appellant is seeking to have the best of two worlds. It would not appear desirable in the interest of sound planning to grant a conveyance which would in effect establish a 7 ft. walkway to service lands to the rear."

Appeal dismissed: *Cro, Georgina, and the Committee of Adjustment of the Township of Thorah, O.M.B. P-244-65, 22 April, 1965.*

Uncertainty surrounding development of land — Plan of subdivision required — An appeal by adjacent property owners against a decision of the Committee granting an application to sever a parcel of land of some 12.2 acres. “The lot proposed to be severed runs along the frontage of the applicant’s total holding on a street which is known locally as Maurice Road and is clearly delineated on a plan of survey filed as Exhibit 1 at the hearing. The survey also indicates three separate rights-of-way which Mr. Maurice would retain in order to give him access to the interior of his remaining property. The application was granted by the Committee of Adjustment which also indicated in the decision that the intended purchaser was buying the property to subdivide the land into summer cottage lots.

“The instant appeal is taken against that decision.

“Counsel for the appellant did not call any evidence but relied entirely upon argument made.

“Mr Steele pointed out that because of the fact that the municipality does not have a zoning by-law a plan of subdivision is a prerequisite for this parcel of land.

“The Board feels that it must accept this argument in view of the uncertainty which surrounds the development of the land. Under the existing circumstances there is no guide as to lot sizes or uses which would result in subdividing the parcel of land or for that matter whether the proposed rights-of-way are properly located in relation to the remainder of the interior lands which the owner proposes to retain.

“In all the circumstances, therefore, the Board feels that such a severance is premature . . .”

Appeal allowed: Committee decision set aside: *McKinnon, John S., and others and the Committee of Adjustment of the Township of Tiny re an application by Gerard Maurice, O.M.B. P-8202-69, 14th April, 1969.*

Chapter XVIII

Conservation Use — Severance

Topographical and Soil Conditions Considered — Land Suitable for Conservation Use 120

Topographical and Soil Conditions Considered — Land Suitable for Conservation Use — An appeal by the original applicant against the decision of the Committee refusing an application to sever a lot having a frontage of 215 feet and a depth of 132 feet from a parcel of 8.33 acres of land.

“The proposal is that this lot will be given by the owners to their son who may at some time build a home on it and will relieve the father from paying the local improvement cost of \$251.67 charged to this frontage because of the improvements recently made on Locks Road. The property has been in the present ownership since 1945. The proposed lot on the west side of Locks Road is separated by a ravine from the balance of 8.33 acre parcel and the land slopes westerly from the road to a depth of 25 to 30 feet at the rear of the lot. There are other residential homes on some of the property fronting on Locks Road.”

“In an attempt to make this lot usable for residential purposes the front of the lot has been filled and this fill extends to about 40 feet from the road on the southern portion of the lot.”

“Evidence adduced by the city in opposing this application indicates that the land use in this area has been under study for quite some time. A more recent study indicates that it should be retained for conservation use, and that the soil is quite unsuitable for building as evidenced by the serious difficulties which the city experienced in installing the services on Locks Road. There is evidence that homes built to the south have a tendency to slip causing serious cracks in the foundations and walls, that an application for a subdivision development to the south of this property had been refused because of the topographical and soil conditions, that there are other land holdings immediately abutting the subject property which would be required to apply for the right to develop a subdivision and it would be unfair to permit a severance on the subject lot.”

The Board expressed its sympathy for the present owner “because of the local improvement cost he is now required to bear” but decided in light of the evidence that no immediate use is proposed for the severed lot; the studies being made and the questionable soil conditions and depth of the ravine, that “in the interest of proper development in the area this application should be refused.”

Application refused: *Doroshenko, Daniel, and the Committee of Adjustment of the City of Brantford, O.M.B. P-4758-67, 30th January, 1968.*

Chapter XIX

Holding Zone — Severance

Severance — One Acre From Two Acre Parcel — Holding Zone 122

Severance — One Acre From Two Acre Parcel — Holding Zone — An appeal by the original applicant against the decision of the Committee dismissing an application for consent to severance of one acre, having a frontage of 165 feet and a depth of 265 feet, from a two acre parcel located on a highway.

“The development in the area is a mixture of commercial, residential, agricultural and industrial. It might be described as a typical highway sprawl.” The subject land is zoned Agricultural and the Board was informed that this zoning will act as a holding zone until the future development of the area abutting the highway has been established. The proposed severance would not conform to the existing by-law.

Appeal dismissed: *Radford, George E., and the Committee of Adjustment of the Township of West Oxford, O.M.B. P-1750-66, 30th December, 1966.*

Chapter XX

Annual Limitation — Severance

Annual Limitation on Severances Per Owner — Welfare of Future Inhabitants Considered 124

Annual Limitation On Severances Per Owner — Welfare of Future Inhabitants Considered — An appeal by the Planning Board on the grounds that to grant the severance of a parcel of land in the township would not be in accord with the plan of development intended by the Official Plan adopted by the Township Council. The Official Plan contains a statement of policy which would limit severances to one per year per owner.

“This was no doubt intended as a guide to itself when control of severances was in the hands of the Planning Board but it nevertheless appears to conflict with another stated policy which is to retain the general agricultural character of the township and to limit urban type development to certain defined areas. The subject property is not in one of these areas.”

Earlier, applications by the owner to the Planning Board, made before the legislation giving the Committee of Adjustment jurisdiction over severances came into effect, had been refused.

“While under the legislation, the Committee of Adjustment now has jurisdiction over severances, it is nevertheless required to give consideration to the matters set forth in Subsection (4) of Section 28 of *The Planning Act*. One of these is the *welfare of the future inhabitants of the township* and the Board is far from satisfied that the almost indiscriminate granting of severances based on a stated policy of one per owner per year is conducive to this welfare.”

Appeal allowed: *Hamilton-Wentworth Planning Area Board and the Committee of Adjustment of the Township of Beverly, O.M.B. N-9985-65, 24 January, 1966.*

Chapter XXI

Twenty-One Years Lease — Severance

Committee — No Reasons given by, for granting Severance — Twenty-
One Years Lease 126

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Required — Construction of Movie Theatre — Dedication of High-
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Committee — No Reasons given by, for granting Severance — Twenty-One Years Lease — An appeal by the Minister against a decision of the Committee granting an application for the severance of a parcel of land having dimensions of 110' by 200' which is occupied by a frame dwelling which is about three years old. "The occupants of the property are Mr. and Mrs. Edward Schmidt. Mrs. Schmidt was the applicant to the Committee of Adjustment for a consent to the severance of this land which was considered by the Committee which granted the application and apparently did not give any reasons for this. This appeal was then launched."

"Evidence in this matter showed that a development company known as Meadows Land Development Company Limited had been engaged in developing this area for several years. They had made several applications for approval of plans of subdivision and only a few of the lots involved in these applications have actually been included in plans which were approved and registered. The subject lands were included in a plan covering a large area which is shown outlined in blue on Exhibit 1 which was submitted to the Honourable the Minister of Municipal Affairs for approval in the year 1967 and such approval was not given.

"Mr. and Mrs. Schmidt leased the subject land from this development company for a period of 21 years less one day and in their evidence advised the Board that the development company has assured them that the deed would be forthcoming. They proceeded to secure a building permit and erect a dwelling which is served by a well and septic tank. Mr. and Mrs. Schmidt's evidence was that the installation of the septic tank was approved by the appropriate health unit and that the installation of it was inspected.

"It seems clear that *The Planning Act* gives the Committee of Adjustment the power to give consents of the type sought by the Schmidts only where the Committee is satisfied that a plan of subdivision under section 28 of *The Planning Act* is not necessary for the proper and orderly development of the municipality. The evidence was that a number of applications for the approval of plans of subdivision in this area had been made and that most of these had not been approved. The subject lands are within the boundaries of a plan which was not approved. In evidence it was stated that residential development in this area was not desirable. Under these circumstances, it would not seem reasonable for a Committee of Adjustment, or this Board on an appeal from a decision of a Committee of Adjustment to grant such a severance."

Appeal allowed: *Minister of Municipal Affairs and the Committee of Ad-*

justment of the Township of Tay, re an application by the Meadows Land Development Company Limited, O.M.B. P-7811-68, 10th November, 1970.

Consent to Lease for more than Twenty-One Years — Plan of Subdivision Required — Construction of Movie Theatre — Dedication of Highway — An appeal by certain objectors representing the Cornell Ratepayers' Association against a decision of the Committee granting upon conditions an application for the consent to lease for more than 21 years an irregular parcel of land.

"The applicant proposes to *construct a movie theatre* on the property in question which use is in conformity with the official plan and applicable zoning by-law."

"The appellants and the Borough of Scarborough object to the application on the grounds that either the whole of the applicant's lands, namely 8½ acres as delineated on Exhibit 1 on both sides of extension of Glencrest Circle be developed by plan of subdivision or that there be an additional condition imposed to the approval. Both proposals are to ensure the dedication of part of the east-west road from Greencrest Circuit to Golf Club Road."

"The applicant objects to these proposals on the grounds that a plan of subdivision is not appropriate because the development on the east side of the circle is now uncertain and is a financially burdensome condition for the present proposal. The applicant also questions the right to impose such a condition to the present application."

"Mr. Kaposi of the Borough Planning Department gave in evidence that the properties to the east had developed primarily by plan of subdivision and that their portion of this road was dedicated to the municipality. He considered that this road was necessary for the overall development of the area."

"One of the appellants residing on Confederation Drive to the south gave extensive evidence indicating that there are at present no complete east-west arteries from Markham Road to Golf Club Road except for Confederation Drive between Lawrence Avenue and Eglinton Avenue. He stated that there was extremely heavy traffic on Confederation Drive now and considered that this questioned east-west road was even now necessary to handle the traffic."

"After a review of all of the evidence I am of the opinion that for the proper and orderly development of the whole area the applicant's property to be considered by plan of subdivision. In such consideration such highways shall be dedicated as the Minister deems necessary."

Appeal granted: Shepard, Royal W., Thomas L. McClean, Alan Dempster and Alan Walsh representing Cornell Ratepayers' Association and the Committee of Adjustment of the Borough of Scarborough, re application by Fairview Centres Limited, O.M.B. P-5809-68, 12th July, 1968.

Chapter XXII

Consent to Mortgage — Severance

Consent to Mortgage — Effect same as Consent to Severance —
Conditions 130

Consent to Mortgage — Effect Same as Consent to Severance — Conditions

— An appeal by the city against a decision of the Committee granting unconditionally a consent to mortgage, a parcel of land having a frontage of 58' and a width of 82' at the rear and an average depth of approximately 161'. The city requested that the Committee attach the following conditions to any consent granted:

- “1. \$6.00 per foot.
2. 5% cash in lieu of land for park purposes.
3. Angle staked and survey prepared.
4. Plan of survey for Assessment Commissioner, City Engineer and Planning Director.
5. Option to allow the city to purchase 33' for road widening at a nominal consideration. Option to run 15 years.”

The Board stated: “The lack of clarity in the wording of these conditions has caused some confusion as to their meaning; the evidence of the applicant indicated that he did not understand how much the city was asking him to pay under each of conditions 1, 2 and 5. In my opinion, the wording in each case should show the total amount sought and the basis of calculation.

“It appears from explanations offered on behalf of the city that under condition 1 the city is seeking payment of \$348 which is based on 58 feet of frontage on Hespeler Road at the rate of \$6.00 per foot frontage. Under condition 2 the city is seeking a payment equal to the value of 5 per cent of the land in respect of which the application for consent has been made. It appears from the lack of evidence on value that the city has not determined the actual amount it is demanding under this condition. This approach is unfair both to the applicant and to the Board. It places the applicant in a difficult position because at the time he appears before the Committee or before this Board he does not know what amount the city is asking him to pay. Moreover, if the Board decides the principle of such a charge is a proper one the most it can do in the absence of evidence as to amount is to impose the condition subject to agreement between the parties as to amount, and failing agreement the matter would have to come before the Board again. Under condition 5, the city again failed to specify the amount it regarded as nominal consideration and this failure raises a similar problem to that resulting from the wording of condition 2. What is nominal consideration to one party might not be nominal to the other.

“On behalf of the city it is submitted that these are the standard conditions

imposed in the case of any severance or division of land and are imposed because the land division by permitting a more intensive use of the land or a greater population density increases the need to expand or provide additional municipal services and facilities.

“The applicant for the consent does not object to conditions 3 and 4. With respect to conditions 1, 2 and 5 it is argued for the applicant that he has requested only a consent to mortgage and that any such conditions requiring the payment of a sum of money or transfer of land to the city for a nominal consideration should not be imposed unless and until there is an application for a consent to convey as the city might otherwise impose these conditions twice to the same parcel of land. In my opinion, it is most unlikely that a duplication of charges in the manner mentioned would be approved.

“In effect a consent to mortgage is a severance; it permits the property to be dealt with in future as a separate parcel. In these circumstances and for the reasons mentioned heretofore I recommend that the appeal be allowed and consent given ‘to convey, mortgage, charge or enter into an agreement with respect to the subject property subject to the following conditions:

1. Payment by the applicant to the city of the sum of \$348, which amount is based on 58 feet of frontage at \$6.00 per foot;
2. Payment by the applicant to the city of a sum equal to 5 per cent of the current market value of the land included in the subject property;
3. The subject property to be angle staked and a plan of survey prepared;
4. Copies of the plan of survey to be provided by the applicant to the city for the assessment commissioner, the city engineer and planning director;
5. The applicant to grant to the city an option to purchase a strip of land, having a depth of 33 feet, across the frontage of the subject property for road widening purposes, with the said option to run for 15 years from the date of this decision;
6. The applicant to furnish to this Board and to the city a legal description of the subject property acceptable for registration;

and provided that in the event the city and the applicant are unable to agree as to the amounts to be paid under conditions 2 and 5, the Board may be spoken to.”

Appeal allowed: *Galt, City of, and the Committee of Adjustment of the City of Galt concerning an application by McKay Peters, O.M.B. P-4500-67, 7th November, 1967.*

Chapter XXIII

Lapse of Consent — Severance

Lapse of Consent — Possible Consequences where Formal Conveyance
made without Consideration 134

Lapse of Consent — Possible Consequences where Formal Conveyance made without Consideration — Appeals by the original applicant against decisions of the Committee dismissing applications for three severances in order that he might make conveyances to his sons.

“The Committee rejected these applications on the grounds that the sons already owned land in the Township and a severance had been granted to his wife.

“It was indicated that, if the applicant desired to sell to strangers who intended to build on the property they were acquiring, the Committee would grant the severances.

“It would appear that the basic principle on which the Committee operates is to allow a severance to either the husband or wife without a severance fee and thereafter only to grant a severance if the purchaser intends to build and a severance fee of \$500.00 is then charged.

“Counsel for the applicant did not quarrel with this principle, but argued that there was no way the Committee was ensuring that the lot created would in fact be built upon.

“It would appear that of such severances granted this year only half the purchasers have applied for building permits.

“The Board concurs in the principle adopted by the Committee; it is obviously poor planning to allow the farms to be cut up with severances where there is no intention of building on the lots created. The Board doubts the wisdom of even allowing a severance to a husband or wife unless there is some assurance of a house being erected on the lot created. This was apparently the intention of the legislature in adding Subsection 3(a) to Section 26 of *The Planning Act* which reads in part as follows:

‘Any consent mentioned in subsection 1 or 3 hereafter granted shall lapse at the expiration of one year after the date upon which the consent was granted unless within such period the land in respect of which the consent was granted was sold, mortgaged or charged or an agreement was entered into for the sale or purchase of such land . . .’

“It could, of course, be argued that after a consent is granted under this section it must be followed by a sale, a mortgage or charge, or an agreement for sale and that a mere formal conveyance without consideration does not qualify as a sale and therefore the consent would lapse at the end of a year from the date it was granted.

“If this should ever be held to be the law it will upset a lot of conveyances in the province. At any rate it does show that the legislature intended that some effective result should follow the granting of a severance.

“The Board is not at all sure that the Committee of Adjustment could not adopt some means of ensuring that a building would be erected within a reasonable time following the granting of the consent.

“Under the circumstances therefore the Board will dismiss these appeals. However, unless the Committee is able to adopt some means of ensuring the erection of a building within a reasonable time following the granting of its consent it would appear that it will have difficulty justifying the continuance of the present policy.”

Appeals dismissed: *McClocklin, James, and the Committee of Adjustment of the Township of West Gwillimbury, O.M.B. P-9571-69, P-9572-69 and P-9573-69, 16th December, 1969.*

See also Decision on prior application by James McClocklin for examination for discovery of Secretary-Treasurer of the Committee of Adjustment, chapter 1, at page 7.

PART IV

MINOR VARIANCE

Chapter XXIV

Minor Variance — Definition

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Minor Variance Not Defined — What To Be Determined — An appeal by the original applicant against a decision of the Committee dismissing an application to permit “the demolition of the existing structure and the erection in its stead of a two-storey masonry building, notwithstanding the following infringements to the zoning by-law: a minimum depth of approximately 125 feet, easterly and westerly side yards of approximately 10 feet and an access lane to parking having a maximum depth of 10 feet whereas the by-law requires a minimum lot depth of 200 feet, easterly and westerly side yards of 20 feet and an access to parking having a minimum of 20 feet.”

The application was refused by the Committee on the grounds that the variances requested are major and outside the jurisdiction of the Committee.

“It is the position of the appellant before this Board that the Committee of Adjustment erred in considering that the 200 feet minimum depth for commercial properties set forth in By-law 7625 was applicable to this parcel and in refusing to permit 10 feet side yards rather than the required 20 feet. The appellant further submitted that the Committee of Adjustment was in error in its interpretation of the provisions of *The Planning Act* in that the application as submitted was a minor variance in the light of the pertinent legislation.

“The appeal before the Board was vigorously opposed by two owners of commercial developments within the immediate area.”

“Consideration has been given to the rather interesting submission made by counsel for the appellant in which he makes reference to section 22.6.2 of By-law No. 7625 of the Township of North York, which sets forth the requirements for registered lots in a commercial zone, possessing a depth of 125 feet or less. It is his contention that at the time the zoning by-law was passed, the council must have considered such undersized lots as that of his client as being capable of utilization since they were zoned commercially, and furthermore states that it is against this background of lesser requirement that the Board must determine the extent of the variances sought. It is his opinion that since a minor variance has never been actually defined by the courts that the determination of what is minor should be to a large extent dependent upon whether or not the proposal is in keeping with the spirit and intent of the zoning by-law and provide for the best use and development of the property rather than on the actual dimension of the variance sought.”

The Board was of the opinion that the appellant could not bring his lands within the scope of section 22.6.2 of the by-law and stated further “while it is quite true that the courts and indeed this Board have not as yet defined a minor

variance in terms of feet and inches, it would appear that this exercise is not necessary to determine in the light of any given case what should constitute a minor variance.”

“What lies to be determined in the light of the legislation cited above may be summed up as follows:

(1) Is the variance requested desirable for the appropriate development of the land, building or structure?

(2) Does it maintain the general intent and purpose of the by-law and official plan?”

The Board was of the opinion that the variance requested was not minor.

Appeal dismissed: *Tricont Projects Limited and the Committee of Adjustment of the Township of North York, O.M.B. N-8713-65, 31 March, 1965.*

Minor Variance — Definition in accordance with stated principles — An appeal by the original applicants against a decision of the Committee dismissing an application for a variance. “The Committee in a well reasoned decision dismissed the application for a variance finding that what was sought was neither minor nor necessary.”

“Exhibit 1, a plot plan of the subject property, shows the present dwelling situated on the lot and clearly establishes the owner’s intention if the application is approved. It should be stated at this time that the subject property is located on a corner lot and the by-law requirements for an abutting side yard in such case is more severe than would be normally experienced for an interior lot. A 30 foot side yard is required here and Exhibit 1 graphically sets out the required side yard line and the intrusion into the side yard that will be occasioned if the appeal is allowed. If successful the appellants could build the proposed new garage to within 15 feet 3 inches of the lot line at the closest point and 17 feet 6 inches at the farthest. An important aspect of the matter is that the present garage attached to the existing building is in serious contravention of the governing by-law being located to within 3 feet 11 inches of the lot line. The building was of course erected prior to the passing of the by-law now in force establishing a 30 feet side yard and enjoys legal non-conformity as long as it stands. It is agreed by the appellants however that they will remove a large section of the offending garage thus providing a side yard of about 17 feet for the existing building which is a considerable upgrading from the present 3 feet 11 inches.

“The Board received Exhibit 2, a letter from the Public Health Inspector to the male appellant, setting out the requirements to be met if a permit is to be issued for a septic tank to serve the present home and the proposed addition. This letter is dated May 1, 1969 and of course was not before the Committee of Adjustment during its deliberations. In its decision the Committee of Adjustment found that the location of the garage was a problem of design only, and not one of necessity, there being ample room on the subject property for its siting outside the yard area. Exhibit 2 however calling for the location of the disposal bed at the extreme rear of the property on undisturbed soil limits the appellants in choice of a location, compelling the erection on that part of the rear yard immediately behind the house addition.

“The pertinent section of the legislation dealing with minor variances under 32b (1) read in part as follows:

‘may, notwithstanding any other act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, provided that in the opinion of the Committee the general intent and purpose of the by-law and of the official plan, if any, are maintained.’

“It is therefore readily apparent that the *consent to a minor variance must not only be dependent upon its being desirable for the appropriate development or use of the land, building or structure, but an essential requirement must be that the general intent and purpose of the by-law and official plan, if any, are maintained*. I am satisfied that this latter requirement comes much closer to being met when some 13 feet 6 inches of the old garage is removed to provide a **greater side yard** and as must follow, better visibility at the corner.”

“*Neither the courts nor this Board has attempted to define minor variance in terms of feet and inches but rather in relation to the principles as set forth as above.*”

Appeal allowed: *Committee decision set aside: Fraser, David K., and Mary Fraser and the Committee of Adjustment of the Township of Vaughan, O.M.B. P-8921-69, 1st August, 1969.*

Minor Variance not defined in Mathematical Terms — Erection of Carport — An appeal by objectors against a decision of the Committee granting an amended application for permission to erect in front of a residence “the

overhang of a completely open side carport which would come within two feet of the front lot line when the by-law requires a set-back of 12½ feet.”

“The *appeal* was first brought by Alwington Park Incorporated which is *an association of residents in the area*. At the hearing it was stated that the applicant had agreed with the association to set back her proposed residence an additional two feet and reduce the length of the carport by two feet which would mean the carport would only come to within six feet of the lot line. It was then stated that the association did not desire to continue the appeal if these terms were adopted in the Board’s decision.

“However, Dr. Stewart Fyfe also appealed and he desired that the appeal should proceed. Dr. Fyfe’s property does not abut the applicant’s property. He is however in the same subdivision and felt that this would set a dangerous precedent. He also felt it would interfere with the view of traffic moving onto King Street from Alwington Avenue. King Street is an old fairly heavily travelled street. Alwington Avenue is a comparatively new street giving an exit from the subdivision.

“As the Board stated in its decision on the file *P-7673-68 it does not believe that minor should be defined in mathematical terms* but rather that the substance of the matter should be looked at and the main consideration should be whether if the variance were granted there would be any substantial prejudice to either the immediate neighbours or the public in general.

“The most cogent evidence in this matter was that of Professor J. E. Hogarth who owns the residence immediately to the west and who strongly supported the view that the carport should be allowed in the front of the residence. His own residence is set back nearly 30 feet from King Street. He is concerned that if an adjustment is not granted the proposed residence might be moved up to the set-back line which he feels would be aesthetically damaging to his residence. He also stated there were older buildings on King Street which were erected before there was any set-back line and which did not comply with the line. None of the immediate neighbours appeared to object to the granting of the adjustment. In the Board’s opinion therefore neither the interests of the neighbours or of the public will be seriously prejudiced if a variance is granted in accordance with the agreement between the association and the applicant.

“In accordance with such agreement the decision of the Committee of Adjustment will be varied by making the set-back of the carport from the street line six feet instead of two feet and in all other respects the decision of the **Committee of Adjustment will be confirmed.**”

Committee decision varied: *Alwington Park Incorporated and the Committee of Adjustment of the City of Kingston, re an amended application by Zita Dossett, O.M.B. P-9021-69, 29th July, 1969.*

Minor Variance — Mathematical Variance Overridden by other Considerations — Limitation on Duration — An appeal by the original applicant against a decision of the Committee dismissing an application for a minor variance. The applicant's residence "is situated at the northwest corner of Overbrook Place and Garthdale Court. There is no sidewalk on this latter street. There is a 17 foot boulevard between the applicant's west lot line and the actual roadway. The applicant has practically completed a carport along the west limit of his house. The rear of such carport is in line with the rear of his house. The width of his carport is 9 feet and the length 24 feet. The length of his house is 30 feet."

"The carport is within 9 inches of the lot line. The side yard requirement by the by-law is 10 feet. The applicant asks for a reduction in the side yard requirement from 10 feet to 9 inches.

"If you define a minor variance mathematically you must inevitably reach the same conclusion as the Committee of Adjustment that this is a major and not a minor variance.

"In the Board's view however there is a good deal to be said in a case such as the present to look at the overall picture and consider whether, if the variance is granted, the general intent and purpose of the by-law would be maintained.

"There would seem no doubt that the purpose of zoning by-laws is two-fold. First to protect the immediate neighbourhood and second to protect the public at large. It would not appear that this carport prejudices any of the neighbours since it is erected on a corner lot. In fact no one appeared before the Board to oppose the application.

"It also would not appear that it would in any way affect the general public at the present time. Since it is set back 6 feet from the front of the house it would not seem that it would interfere with the observation of traffic across the corner between the two streets. The only time it would be affected would be if a sidewalk were constructed on Garthdale Court.

"The Board will therefore allow the appeal and grant the variance but will limit its duration to such time as construction of a sidewalk is begun on Garthdale Court.

“It has been said that law is made for man and not man for the law. It seems to the Board that powers of granting variances should be construed broadly where neither the interests of the public nor of the neighbours are concerned.

“It can of course be argued that the applicant should have to apply to council for a special amendment to the by-law.

“The answer to this would seem two-fold. The first is that the municipality has not the power to put a time limitation on its by-laws. The second is that in the larger municipalities the councils have such a large volume of important work to do that it can hardly be expected to deal with individual by-laws for single residential units.

“The Board trusts that it will be seen that its order will be registered on title so that any subsequent purchaser will be aware of the time limitation.”

Appeal allowed: *Pfeffer, John, and the Committee of Adjustment of the Borough of North York, O.M.B. P-7673-68, 19th February, 1969.*

Minor Variance — Best Guide — Effect of Approval rather than Quantitative Considerations — An appeal by the original applicant against a decision of the Committee dismissing an application for a minor variance to authorize the construction of a garage.

“According to the evidence of George Lannon, the husband of the owner, a building permit was obtained on June 27, 1969, authorizing the building of a garage. At this time, it was the appellant’s intention to simply raise the building because the floor was below grade and flooding problems were being encountered. The permit shows a sketch of the site location of the garage strictly in conformity with the by-law requirements of a 10 foot separation of the garage from the main building with a 2 foot side and rear yard. As the size of the garage is shown as 20 feet by 25 feet, it is readily apparent, that if the evidence for the appellant is to be accepted and having regard to the rear yard available, it would have been impossible to locate the garage within the provisions of the by-law. In any event upon commencement of the alterations, it was found impractical to raise the building and on advice of the carpenter, it was decided to demolish the old garage and rebuild. In rebuilding, however, the terms of the building permit were ignored and a garage, larger and higher than the former was virtually completed. A stop order was issued on July 22, 1969, and apart from minor work to protect the building from weather conditions, no further efforts were made to complete the garage.

“In view of the dimensions of the garage, being 28 feet in width and 30 feet

in length, and 17 feet, 9 inches in height, the by-law is contravened as follows:

- (a) slightly more than the required maximum 30% of the rear yard is covered by the garage;
- (b) because the building is more than 14 feet in height, a 5 foot side and rear yard would be required. In fact there is less than 2 feet;
- (c) the distance from the main building to the garage should be 10 feet, whereas there is only 3.82 feet between the buildings.

“The only person to appear in objection was Mr. Gorst, the owner of the property immediately to the north. It was his contention that as a consequence of the height of the garage, he would be deprived of some degree of light and air. Mr. Gorst indicated that he would have no objection if the height were reduced. Later in the proceedings, this objection was withdrawn.

“My concern is twofold. At first blush, it might appear that the appellant flagrantly ignored the terms of the building permit. After hearing his explanation, however, it may well be that the appellant may not have appreciated the full nature and effect of the permit. Since there is some doubt in my mind, I am willing to give the appellant the benefit of such doubt. *With respect to whether the variances involved are minor, it is my opinion that in an application such as this, the best guide should not be by quantitative considerations of the variances, but the effect of approval.* The person best qualified to decide if the effect of the proposed building would adversely affect the adjoining property is the owner of such property and withdrawal of such objection must be construed in favour of the application. As to the desirability of the garage as proposed for the appropriate development or use of the land, the photographs would indicate that the design of the garage would not detract from the appearance of the building. There was however, no planning evidence adduced.”

Appeal allowed: *Lannon, Cecile S., and the Committee of Adjustment of the City of Fort William, O.M.B. R-498-69, 9th March, 1970.*

Minor Variances — Cumulative Effect of — An appeal by an objector against a decision of the Committee granting an application for authorization of certain minor variances which would “permit the erection of an additional dwelling and garage on the southerly half of the lot and the demolition of the existing garage which would be replaced by one sited on the northerly half of the lot.”

“Since the lot has a total frontage of 64.78 feet and it is proposed to allocate 32.45 feet to the existing dwelling and 32.33 to the other, the first variance sought is a reduction from the by-law’s frontage requirement of 35 feet. The

second variance sought is a reduction from the lot area requirement of 3,500 square feet to permit a lot area of 3,245 square feet for the northerly half and an area of 3,233 square feet for the southerly half. The third variance sought is an increase in the maximum floor space index from .4 to .45 for the proposed dwelling. The fourth variance for which authorization is sought is a reduction from the sideyard requirement of 4 feet to 3.47 for the northerly sideyard of the existing dwelling.

“The subject property is located in an area zoned for single family dwellings which is described as a better than average residential district developed before the passing of the zoning by-law. It is predominantly a single family dwelling area with a few semi-detached dwellings and a triplex at the corner of Church and Pine. The latter was built as a triplex in 1949 before the passing of By-law 2146 in 1954. The character of the buildings in the area is well shown in the photographs filed Exhibits 4 to 12 inclusive in these proceedings.

“The appeal against the granting of the application is on the grounds that an increase in density beyond that permitted by the by-law should not be allowed because of traffic and parking congestion on the streets in this neighbourhood, inadequate sewer capacity, and lack of conformity with the characteristics of this single family area. The owner of the subject property stated on cross-examination that his own basement had never been flooded but he had heard of others flooding in the neighbourhood.

“The authority of a Committee of Adjustment or this Board in a matter of this nature extends to authorizing minor variances from provisions of restricted area by-laws but only such minor variance as is desirable for the appropriate development or use of the land and provided that the general intent and purpose of the by-law is maintained. In my opinion, *although any one of the variances for which authorization is sought might be regarded as a minor variance in some circumstances, the cumulative effect here is more than minor.* Moreover, in view of the doubt raised as to sewer capacity in this neighbourhood the evidence for the original applicant fails to establish that any relaxation of the requirements of the by-law to permit an increase in density at this location is desirable or appropriate for the further development of the subject property.”

Appeal allowed: *Shorey, Elva, and the Committee of Adjustment of the Borough of York, re an application by Walter James Maxwell Bemrose, O.M.B. R-1511-70, 10th June, 1970.*

Chapter XXV

Errors

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Minor Variance — Allowance for Honest Error — An appeal by the original applicant against the decision of the Committee dismissing an application for minor variance.

“The facts in this appeal are quite simple and can be quite concisely stated. The appellant, Mr. Anthony Stratas, made an application to the Committee of Adjustment to replace an existing frame addition to the rear of his premises at 37 Lola Road with a new structure having dimensions of 18 feet 9 inches by 11 feet 6 inches.

“The Committee considered the application and by a decision dated June 26, 1969, granted permission to erect an addition having dimensions no greater than 12 feet 6 inches wide and 11 feet 9 inches deep indicating that in the opinion of the Committee, the revised application was reasonable and came within the meaning of a minor variance.

“The evidence adduced at the hearing, indicates the appellant then made arrangements with a contractor to carry out the work who proceeded to construct the addition with dimensions of 18 feet 2 inches by 15 feet 2 inches. This of course, exceeded the size allowed by the Committee’s decision.

“There appears to have been a misunderstanding on the builder’s part as well as a lack of supervision due to the owner’s absence from the city during the course of construction.

“A second application was then made to the Committee of Adjustment on the basis of what had been built rather than what had been allowed by the first decision. This application dated September 9, 1969, was refused by the Committee of Adjustment in a decision dated October 23, 1969, and reads in part as follows:

“ ‘Although it is unfortunate a larger addition than permitted has been constructed the Committee is of the opinion it is not now in a position to change its earlier decision to allow an addition of greater dimensions. The application is therefore refused’.”

“This appears to be one of those cases where some allowance might be made for honest error . . .”

Appeal allowed: *Stratas, Anthony, and the Committee of Adjustment of the City of Toronto, O.M.B. R-966-69, 24th March, 1970.*

Minor Variance — Improper Siting caused by Error — An appeal by a person objecting to a decision of the Committee of Adjustment which approved an application for a variance from municipal zoning regulations “to permit the erection of a one-family two-storey dwelling house with a sideyard set-back of 2 feet 3½ inches, whereas a minimum 2 feet 6 inches is required.”

“This property has been the subject matter of a number of previous applications to the Committee of Adjustment and in one instance this Board, otherwise constituted, ruled against permitting construction on the lot for the reasons indicated in a decision dated August 23, 1967 (File P-3334-67). Subsequently By-law 378 (Exhibit 1) was enacted to remove the frontage disability and thus effectively recreating two building lots. This application is therefore on a different premise.

“The respondent, upon being issued a building permit, commenced construction but unfortunately improperly located his building with respect to the sideyard requirements as clearly seen on the plan of survey filed as Exhibit 2. The dwelling was located too far to the north thereby only allowing 2 feet 3½ inches from the northerly boundary which is adjacent to his other property, and 2 feet 7⅞ inches at the southerly boundary which is adjacent to the property of the appellants.

“The evidence of the appellants indicates that objection is really being taken to the lot severance and not to the requested variance.

“I am satisfied upon the evidence that the erection of the building should be permitted. It is a minor variance from the provisions of the by-laws of the municipality now in force within that municipality. It is not reasonable in the circumstances, including all of the past history of dispute, to withhold approval. The evidence substantiates that the improper siting was caused by error and not deliberate. The ultimate result has actually been to give more setback in relation to the appellants’ property.”

Appeal dismissed: Tanner, William G., and Nina M. Tanner and the Committee of Adjustment of the Borough of York, re an application by Bronius Dowgwillo, O.M.B. P-9871-69, 2nd April, 1970.

Purchaser — Responsibility for Investigation of Variances From By-law — The appellant, the owner of a lot upon which is erected a dwelling, applied to the Committee for permission to make an addition to the rear of the building

which would extend 7 feet into the rear yard and have a width of 20 feet, thus adding 140 square feet to the existing building. The lot contains a total of 7,500 square feet.

“At the time of construction of the building the governing by-law required sideyards of 5 feet and a rear yard equal to 25% of the lot depth with a minimum of 25 feet. This was changed by the passage of By-law 1108 on May 19, 1959, which placed these lands in an SR3 category for which minimum requirements, as stated in the certified copy of By-law 1108 filed with the Board, are: Lot area 8,000 square feet; lot frontage 55 feet; front yard 45 feet; rear yard 45 feet; side yard 10 feet.”

A plan furnished at the request of the Board by an Ontario Land Surveyor included the adjoining property of the principal objector, as well as the appellant's property and showed that “neither building conforms in all respects to either the old by-law or the new by-law.”

The Board stated “The objection was principally on account of the obstruction to his view that would be caused by the addition but very little weight can be given to this particularly as the view in this direction is largely obscured at the present time by bushes and might be more so.”

“However the most important fact is that this property was purchased in 1965 after By-law 1108 had been in effect some 6 years. It is not likely that the present owner was not then made aware of the numerous variances from the by-law and even if she was not made aware of them the responsibility was hers to make the necessary investigation to find out.”

The Board decided that under these circumstances it was not appropriate to grant another variance.

Appeal dismissed: *Snyder, Mildred, and the Committee of Adjustment of the City of Waterloo, O.M.B. P-738-65, 29th April, 1966.*

Chapter XXVI

Front Yard — Frontage — Variance

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Front Yard Set-Back — Reduction from 20 feet to 10 feet — Not a Minor Variance — An appeal by objectors against the decision of the Committee granting an application upon a condition ‘to permit the construction of 11 single family dwellings having a front yard of 5 feet each whereas the . . . by-law requires a minimum front yard of 20 feet.’

The decision of the Committee of Adjustment was as follows:

“It is hereby ordered that the application be granted on condition for the following reason and subject to the condition as expressed in (b) below:

“(a) The proposed layout suggests that the granting of the application would not appear to create any hardship on the neighbours.

“(b) The granting of the application shall be subject to the condition that the applicant provide a front yard of 10 feet in each case.

“And it is hereby further ordered that the lands and premises above described be, and they are hereby exempted from the provisions and operation of the said By-law Number 2514, as amended, so as to permit the construction of a subdivision of eleven (11) single family dwellings and thus provide a front yard of 100 feet.

“And it is hereby further ordered that in the event the relief hereby granted is not used or acted upon within twelve months after date hereof, the Order granting the variance shall expire and shall be deemed to have been annulled and rescinded by the Committee.”

The appellant objected to the location of services on the roadway and also argued that “the Committee of Adjustment in granting the reduction from 20 feet to 10 feet of the required setback on all eleven lots in the subdivision exceeded the power granted it under the authority of *The Planning Act*.”

“For the developer, evidence was adduced setting forth the reasons for the reduction of the front yard set-back and for the location of the services on the roadway which he is required to provide in order to service this unusual shaped property, particularly the requirement of a larger rear lot area for the larger than usual homes that he intended to build, the homes being of greater value in order to compensate him for the additional cost occasioned by the necessity of charging all the services to the lots on one side of the street.”

The Board did not comment on the merits of the proposal or the objections but addressed itself to the question of the Committee’s jurisdiction and stated: “Having examined the pertinent clauses dealing with the question of jurisdiction that are found in the Act, I have been persuaded that the reduction of the set-back from 20 feet to 10 feet on all the lots in this subdivision does not constitute a minor variance.”

Appeal allowed: *Clarke, Luther C., and others and the Committee of Adjustment of the City of Windsor, re application by R. C. Pruefer Company Limited, O.M.B. P-4685-67, 30th January, 1968.*

Variance — Frontage — Evidence of Traffic Hazard not Substantiated —
An appeal by the original applicant against a decision of the Committee dismissing an application for variance from the lot frontage requirements of the by-law.

“The applicant acquired the Lots 1 - 6 inclusive several years ago and in May 1966 acquired building permits from the municipality for the purpose of erecting dwellings thereon. After completion of the basement excavation, the company was advised by the town clerk that Lot 1 did not have the required amount of frontage under the by-law. The company’s application to the Committee for approval of a variance was refused. After some discussions with the Department of Highways with respect to its position the company made a second application and it is the refusal of this second application which was the subject of this appeal. The by-law requires a minimum frontage of 50 feet and defines frontage to be the width of a lot measured along a line 20 feet back from and parallel to the street line. The subject lot has a width of 12.86 feet at the street line and its frontage, as defined in the by-law is claimed by the appellant to be 31 feet and by the municipality to be about 24 feet. No evidence was adduced to support either measurement.

“The only evidence in opposition to this appeal is that of the chairman of the Planning Board who expressed the personal opinion that the permission of access to this lot would create an additional traffic hazard which should not be allowed. He agreed that the erection of dwellings on Lots 2 to 6 inclusive had not created a hazard and he conceded that he was not familiar with any requirements of the Department of Highways with respect to access in the vicinity of highway intersections. No evidence from traffic experts or police officers was offered to support the opinion of this witness.”

“On the other hand, it appears from the letter dated October 12, 1966, signed by J. A. Milne of the Department of Highways (Exhibit 4) that the Department had granted a building permit to the company which implies that it was satisfied with the question of access. It also appears that the questions of traffic hazard and safety were fully considered prior to registration of the plan when it was required that daylighting triangles at the intersection be dedicated to the Department. These triangles, upon which no building or structure may be erected, extend 50 feet along the street lines from the inter-

section. Thus, a motorist travelling along Highway No. 17 with the intention of turning north on Ridge Road would have a travelling distance of at least 100 feet with unobstructed vision (and a reduction in speed to make the turn at the intersection) before reaching the point of access to Lot 1 on Ridge Road.

“Based on the evidence offered at this hearing, I consider that *the opinion this would create a traffic hazard is not substantiated*. It appears to me that any effect on traffic would be minor. Approval of this variance is also necessary and desirable for the development of this lot, the measurements and shape of which were satisfactory to all the authorities whose approval was required when the plan was registered.”

Appeal allowed: *Cooper-Noik Lumber Limited and the Committee of Adjustment of the Town of Deep River, O.M.B. P-2860-66, 27th July, 1967.*

Violation of Front Yard Set-Back — No One Adversely Affected — An appeal from a decision of the Committee who refused a variance of 4' 3" in the front yard of the subject property on the grounds that the relief applied for was not a minor variance.

The parcel is situated in an R-1, residential zone which, *inter alia*, requires a front yard set-back of 25 feet and a maximum building area occupancy of 35%. The existing building coverage is only 30.64%.

“Many of the actual set-backs of the buildings in the area are less than 25 feet. Many neighbouring property owners appeared and gave evidence in support of the appeal, while no one appeared to object. The appellant contractor gave a reasonable explanation as to how the violation occurred.

“Since it is obvious that the building coverage is within the zoning by-law provisions, this cannot be a reason for dismissing the application. In the circumstances no one appears to be adversely affected.”

Appeal allowed: *Beehler, Bernard J., and the Committee of Adjustment of the City of Belleville, O.M.B. N-8081-64, 23 December, 1964.*

Chapter XXVII

Side Yard — Variance

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Boathouse location — Side yard variance — An appeal by the original applicant against a decision of the Committee dismissing an application for a minor variance.

“The appellant owns a parcel of land having a frontage of about 108 feet on Lake Ontario upon which is situate a *cottage* which he purchased in 1963 at which time there was in effect a by-law requiring 40 foot side yards. A *partially constructed boat house* having dimensions of 12 feet by 20 feet also is situate on this parcel of land. It was erected to its present state of construction by the appellant in 1966 without benefit of a building permit and is located about 4 feet from one lot side limit.

“The lake frontage is comprised mainly of a 5 foot height of land and it is only in the immediate vicinity of the boat house that the lot frontage is at or about lake level.

“Counsel for the appellant informed me that his client wished permission to leave the boat house where it is because it was the only practical location on the lake frontage for a boat house because of the 5 foot height of land and also it would not obstruct the view of the lake from the cottage as it would if its location complied with the by-law.

“Evidence adduced on behalf of the municipality indicated that the boat house could be so cited in compliance with the by-law if it were built into the 5 foot height of land. If this were done the boat house could be used in accordance with its purpose and would not interfere to any great extent with the view of observation from the cottage.

“I realize that it will incur a higher expenditure in order to comply with the by-law’s provisions but I do not think this is a sufficient reason to grant the relief sought in view of the fact that the appellant has enough frontage to comply with the provisions of the by-law. I also do not think that because the adjoining land owner who objected to this application before the Committee of Adjustment is not prejudiced if this appeal is allowed is a reason to disregard the provisions of the by-law.

“Even if I felt that relief should be granted I fail to see how a 4 foot side yard can be regarded as a minor variance where the by-law requires 40 feet.”

Appeal dismissed: *Ridout, William, and the Committee of Adjustment of the Township of Darlington, O.M.B. P-8366-69, 26th June, 1969.*

Elimination of Side Yard — Not Minor Variance — An appeal by the original applicant against a decision of the Committee dismissing an application which would result in the elimination of a side yard.

“The front portion of the applicant’s property is in a Green Belt zone on which is erected a building used as a garage and dwelling. The use is legal non-conforming.”

“Along the southerly lot limit there is an existing retaining wall for a short distance and the applicant wishes to enclose the space between the retaining wall and the building and use it in conjunction with his business. If this were done the sideyard would be eliminated whereas the by-law requires a 50-foot sideyard in a Green Belt zone.”

Appeal dismissed: *Agnitsch, Herebert, and the Committee of Adjustment of the Township of Pickering, O.M.B. P-4905-67, 10th April, 1968.*

Encroachment in Excess of Existing Side yard variance — An appeal by the owner of an abutting property against a decision of the Committee granting an application for a minor variance to allow the construction of a side porch on a property in a single-family area. A single-family dwelling is constructed on the lands of the applicant and a single-family dwelling on the lands to the east owned by the appellant. The by-law requires a minimum of 4 feet.

“The applicant before the Committee asked for and was granted a variance from the minimum side yard provisions of the by-law to permit him to construct a side porch which would encroach on the side yard in excess of the present encroachment which appears to be about 1 foot 6 inches. The appellant alleged before me that she was not given a fair hearing before the Committee of Adjustment but be that as it may it would seem that the simplest method of doing justice is to afford a fair hearing before this Board which I have done. Of course, I would hesitate in any event to find that a fair hearing had not been given but in the circumstances it is not necessary to make any finding in that regard.

“I have retained this matter under consideration for an unusual length of time in the hope that I might be able to arrive at some resolution of the problem whereby what appears to be a legitimate need of the applicant could be satisfied without encroaching further on what is already quite a narrow side yard. After very extended consideration I am respectfully of the opinion that the variance

should not have been granted in the light of the very strong objection by the neighbour owning the dwelling which abuts to the east.”

Appeal allowed and variance refused: *Stone, Ida K., and the Committee of Adjustment of the Borough of North York re an application by Maynard Martin, O.M.B. P-7048-68, 30th May, 1969.*

Erection of Carport — Condition requiring Survey — An appeal by an objector against a decision of the Committee granting an application relating to a side yard variance to permit the erection of a carport upon two conditions, one as to controlled drainage, the other involving the procurement of a survey.

“This latter condition was apparently the result of uncertainty on the Committee’s part as to the exact lot lines by reason of the conveyances in this development having followed metes and bounds descriptions rather than a plan of survey.

“At the current hearing the objections related most particularly to the fact that the required survey had not yet been obtained but that is a requirement that will undoubtedly be insisted upon before a building permit is granted and the applicant’s reluctance to go to the expense of procuring it pending the outcome of this appeal is understandable. Similarly, the question of title and the true availability of an adequate side yard to permit the structure was not a suitable point to be resolved by the Committee or this Board.

“The other objections relating to such points as drainage, value loss and fire hazard were not adequately substantiated before me and I therefore recommend that the decision of the Committee be maintained. . . .”

Appeal dismissed: *Ihnat, Michael B., and Barbara Ihnat and the Committee of Adjustment of the City of Galt, re an application by Manol Olides, O.M.B. P-7068-68, 7th February, 1969.*

Error by Architect — Side Yard Variance — An appeal by the original applicants against a decision of the Committee dismissing an application for a minor variance.

“The relevant municipal by-law requires a minimum side yard of 10 feet. The foundation of the semi-detached dwelling which has been constructed on the subject lot is situate within 7 feet 6 inches from *each* side lot line at the rear portion of the building.

“The infringement apparently occurred as a result of an error on the architect’s part who, in deciding on the design for the proposed building, assumed that the lot was wider than it in fact is.

“I am of the opinion that this is not a minor variance and that the Committee of Adjustment therefore had no jurisdiction to hear and decide on the application for relief. . . .”

Appeal dismissed: *Bramalea Consolidated Developments Limited and the Committee of Adjustment of the Township of Chinguacousy, O.M.B. P-6229-68, 4th October, 1968.*

Location of Building Contrary to By-law — Onus upon Builder — An appeal by the original applicant against a decision of the Committee dismissing an application to authorize as a minor variance the incorrect location of a building erected by the appellant. “The Municipal by-law relating to location of buildings on lots requires a minimum side yard of 6 feet on the north side of Lot 186 and a minimum side yard of 4 feet on the south side thereof. In fact, there is only a distance of 3.84 feet from part of the wall of the building to the north limit of the lot and 3.31 feet from part of the south wall of the building to the south lot limit.”

“Before this building was constructed the appellant applied to the Committee of Adjustment for a variation in the north side allowance from 6 feet to 4 feet and this was granted. As set out in Exhibit 1 herein the building was to be no closer to the north lot limit than 4 feet nor 4 feet 1 inch from the south lot limit. However, when completed the building violated both side allowance requirements.

“In my opinion the variances aforesaid are not minor in nature and therefore there is no jurisdiction in this Board to approve same. The building is completed, has been sold and is occupied by the purchasers who gave evidence at the hearing stating that they were content to reside in the house notwithstanding its incorrect location on the lot and that they did not wish to experience the inconvenience required if they had to move out.

“If consent for these minor variances had been applied for before the building had been erected I would not have recommended approval of same for the reason aforesaid. Whether or not the building has been erected does not affect this conclusion for to reason otherwise would mean that by-laws could be circumvented by persons proceeding with some form of activity

without first getting permission so to do and then plead relief based, not on good planning principles, but on the fact that the building was erected so it might as well be condoned. To do this would permit relief being granted indirectly which would not be granted directly.

“I think that there is a great onus on a builder who plans to erect a home to be situate on the exact limit permitted to ensure as early as possible that the foundation is properly located before proceeding to complete the house. This was not done in this case but by reason of this incorrect location I was advised at the hearing that in regard to houses constructed after this one it is the practice of the appellant to ensure as soon as the foundation is in that the house is situate in accordance with municipal by-laws. I would have thought that as a matter of prudence such a procedure should have been adopted in this case.”

Appeal dismissed: *Sultana Construction Limited and the Committee of Adjustment of the Village of Markham, O.M.B. P-6737-68, 18th December, 1968.*

Neighbouring Property Residents — Structure Detrimental to the Enjoyment of — Erection of Sun Deck — An appeal by the original applicant against the decision of the Committee dismissing an application for a variance to permit the erection of a sun deck which would be closer to the side lot line than permitted by the by-law.

“The subject property is a cottage lot having a frontage of 50 feet by a depth of 165 feet. At the date of the application to the Committee of Adjustment there were two cottages situate on the lot as well as concrete footings for a boat-house that had burned down in 1964. The evidence indicates that this old building had been used for boat storage as well as an open sun deck on its flat roof.

“It is proposed by the appellant to construct on the existing concrete footings a structure that could be used as a boat-house below and an enclosed sun deck above. There is some difference of opinion as to its distance away from the side lot line, i.e., one or two feet, whereas the by-law requires five feet.

“It appears from the evidence that the appellant commenced the construction of the sun deck without the obtaining of a building permit and continued even after being advised to discontinue. A number of photographs were filed as exhibits which substantiate this finding of fact. Eventually, the structure collapsed in the spring of 1967.

“It is asserted by the appellant that it is his intention to build only an enclosed sun deck and not a structure for general human habitation. The access to the building is not through the cottage to which it is attached but via a separate outside stairway. Evidence was submitted on behalf of the municipality to the effect that the structure could be used for human habitation.

“By-law A-30 sets out the relevant zoning provisions applicable to the subject property. It is indicated therein that an ‘accessory building’ is a detached building; and that no summer cottage be erected less than 25 feet from the rear boundary (lake-front in this instance). It could therefore be said that not only the side yard provisions but also the rear yard provisions of the by-law were being contravened, but I find it unnecessary to rest my recommendations on either this ground or the question of the intended use of the building.”

The Board decided “. . . that to permit the structure as proposed would be detrimental to the enjoyment of the neighbouring property residents.”

Appeal dismissed: *Ferman, Sol, and the Committee of Adjustment of the Township of Innisfil, O.M.B. P-2959-66, 30th June, 1967.*

Service Station — Extension To — Side Yard Variance — Objection To Operation Contrary To By-law — An appeal by the owner of a service station against the decision of the Committee refusing approval to extend an existing building. The service station has a side yard of 4 feet instead of 15 feet as required by the by-law. The property abuts a wide hydro right-of-way carrying high tension lines and the use as a service station is in accord with the zoning. The proposal is to extend the existing building with the same side yard.

“The town issues a licence for service stations and a licence for public garages. These premises have been licensed as a service station and it was quite clear from the evidence that the only objection to the application was because the lessee of the station carries on, or allows to be carried on, certain car repairs which clearly do not come within the service station licence or the zoning provisions for service stations. It was argued for the town that this should be taken into account in deciding whether or not the requested variance should be granted and it is apparent from the minutes of the Committee of Adjustment that this was a major factor influencing their decision.”

An objection was heard from the owner of an apartment building next door who complained of the activities which are carried on on the service station

property. The service station was in existence when the apartment was bought.

“Although there would appear to be some doubt as to whether the subject property conforms to width and depth requirements of the by-law, the only variance requested was in the one sideyard which is adjacent to the hydro right-of-way. I am satisfied that the variance is a minor one in view of the adjacent right-of-way and I am also satisfied that *any operation which the lessee carries on which is contrary to the licensing by-law or zoning by-law is not a matter to be taken into account in dealing with this variance*. Obviously they are matters to be dealt with through prosecution or the withholding of a licence.”

Appeal allowed: *Canadian Petrofina Limited and the Committee of Adjustment of the Town of Burlington, O.M.B. P-2685-66, 6th March, 1967.*

Siting of Dwelling to avoid removal of large Trees — Objection to Decision authorizing approximate Set-back — An appeal by the owner of abutting property from a decision of the Committee granting an application authorizing as a minor variance a reduction in the easterly sideyard set-back from the minimum of 14 feet required under the by-law to a “set-back of approximately 11 feet” in respect of a vacant lot. The variance was sought to permit *the siting of a proposed dwelling in such a way to avoid the removal of certain large trees which improve the appearance of the property*.

“The appellant objects to that decision on the grounds that the use of the word “approximately” renders it vague, that it goes beyond the variance sought by the applicant and if exploited to its fullest extent would be harmful to those amenities enjoyed by the appellant on her own property.”

“It appears from the evidence that the applicant had only sought to encroach upon the required sideyard to a very limited extent at the north-east corner of the proposed dwelling rather than a reduction of the entire sideyard.”

“Evidence on behalf of the original applicant was that the final siting of the dwelling had now been ascertained, and in this respect there was filed as Exhibit 6 a site plan entitled ‘Residence for Mr. and Mrs. S. Armel, Plot Plan, Dwg. No. A-1, Nightingale and Quigley Architects, Job No. 6718’ and dated May 3, 1968. It was the evidence of Mr. Nightingale on behalf of the original applicant that the variance could be limited to a sideyard reduction of 1.5 feet at the north-east corner of the proposed dwelling extending for a distance of 10 feet along the easterly wall of the dwelling from the said corner.”

“Counsel for the appellant indicated that his client would be satisfied if the variance is limited to that described in the preceding paragraph and the dwelling is sited in accordance with the plot plan filed as Exhibit 6. This is acceptable also to the applicant.”

“In these circumstances, the appeal being successful in part, I recommend that the decision of the Committee of Adjustment be set aside and substituted therefor authorization of a minor variance in accordance with the plot plan filed as Exhibit 6.”

Appeal successful in part: *Cohen, Sonia, and the Committee of Adjustment of the Borough of North York, re application by Paul Nightingale and Garnet Quigley, O.M.B. P-5416-68, 27th May, 1968.*

Chapter XXVIII

Rear Yard — Variance

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Complete elimination of rear yard — Legislative decision — An appeal by an objector against a decision of the Committee granting upon conditions an application for a minor variance from the rear yard provisions of the by-law.

“This appeal was taken by Niagara International Centre Limited against a decision of the Committee of Adjustment dated November 12, 1968, whereby the Committee granted an application to Botyanski Niagara Centre Limited. The original application to the Committee by Botyanski sought a variance from the provisions of By-law 5335, as amended, which allows the *construction of an eight-storey hotel having a rear yard of 0 feet whereas the by-law requirement is 20 feet*. The application as has already been pointed out was granted subject to certain conditions.

“The land in question *adjoins the lands of Niagara International Centre Limited*, the appellant, which operates the *Skylon Tower*. The property fronts on the unopened road allowance of Robinson Street and is bounded on 2 other sides by quite steep hills. This means that access to the property is gained by means of a driveway from the end of Robinson Street and through the proposed parking area.

“Neither the appellant nor the respondent called any evidence in this matter but relied upon submissions made. It should also be pointed out that counsel for the City of Niagara Falls and the Niagara Parks Commission appeared in support of the appeal but only gave argument at the hearing.

“Mr. Patrick Murphy, the assistant fire inspector for the city fire department, appeared on his own behalf to give evidence. He indicated because of the positioning of the building and being surrounded on three sides by difficult terrain that *to fight a fire in the proposed hotel would be very difficult indeed*. The only access for the fire equipment would be through the parking lot and to properly position the aerial truck would be almost impossible.

“In spite of this disturbing evidence, I must, however, direct my attention to what I consider an even greater fault in this application. *This relates to the complete elimination of a requirement of the by-law namely the 20 feet necessary for a rear yard. In my opinion this is a legislative decision which could only be accomplished by an amendment to the by-law.*”

Appeal allowed: Committee decision set aside: *Niagara International Centre Limited and the Committee of Adjustment of the City of Niagara Falls, re an application by Botyanski Niagara Centre Limited, O.M.B. P-7624-68, 21st April, 1969.*

Chapter XXIX

Floor Area — Variance

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Floor area — Increase in — Right of owner to adapt to changing conditions by remodelling — Not a minor variance — An appeal by a ratepayer's association against the decision of the Committee granting upon condition an application authorizing as minor variances a reduction of a side yard to "one foot four inches from the by-law requirement of three feet and an increase in the gross floor area to 1,700 square feet from the maximum of 1,312.5 permitted under the zoning by-law. The existing dwelling has two storeys and a gross floor area of 1,300 square feet. The variances are sought for the purpose of erecting a third storey addition with a gross floor area of 400 square feet."

"The appellant agrees that the side yard variance is of little significance in this matter because it has been established by the side wall of the existing building, but argues that the variance with respect to gross floor area is not a minor variance and in fact constitutes a major departure from the standards set out in the by-law.

"Evidence of the architect who designed the proposed addition is that it would not detract from the appearance of other homes in the area, that exterior changes would be barely noticeable and that in fact it would not be possible to see any increase in roof level because of the angle of the proposed projection of the roof line except from beyond a distance of forty feet from the front of the dwelling. The application of the owner for the variances was supported by a number of friends and neighbours living in the area and some of these indicated that they were also entertaining thoughts of renovating their own properties. One expressed the belief that owners in this area should be given flexibility to adapt to changed conditions by remodelling and renovating and increasing floor areas.

"I agree with counsel for the appellant that this is more than a minor variance and as a precedent would encourage other applications for major departures from the standards prescribed in the by-law for this area. If conditions have changed to the extent that these standards are obsolete and should be removed or drastically altered, the proper course of action is to seek those changes by way of amendments to the by-law."

Appeal allowed: *Lawrence Park Ratepayers Association and the Committee of Adjustment to the City of Toronto, O.M.B. P-6053-68, 19th August, 1968.*

Garage — Demolition — Replacement By Two Storey Structure — Maximum Floor Area Exceeded — An appeal against a decision of the Committee granting a variance in respect of side yards and floor space pertaining to a property, zoned single family residential.

The property is occupied by six persons; the owner; her son; daughter-in-law; and three granddaughters. Existing building, a two-storey dwelling with six rooms, including three bedrooms, two bathrooms, and a basement which is divided into a recreation room, laundry room and furnace room. There is attached a single-storey garage. Lot frontage is 39 feet and depth 120 feet which provides a total area of 4,680 square feet.

“The purpose of the original application was *to permit the demolition of the existing garage and its replacement by a two-storey structure of the same width but extending the full length of the house*. The reason for the proposed rebuilding is said to be a need for additional bedroom accommodation and a place for the eldest granddaughter to study. The addition proposed would contain the garage and a room 12'8" by 9'4", on the first floor and two bedrooms and a bathroom on the second floor.”

“The houses in the neighbourhood . . . were built about 18 years ago and side yards vary from 9 inches in some cases to 3 feet in others. *An alleviating factor to some extent is that the one-storey garages permit some day-lighting between the taller two-storey dwellings* . . . these are good quality dwellings which have been well-maintained.

“The variance authorized by the Committee of Adjustment as to side yard requirements would permit the construction of the two-storey addition to the same distance (2'9") from the lot line as the existing one-storey garage. The second variance would permit floor space to exceed the maximum permitted by the by-law based on lot area by 236 square feet; i.e. by slightly more than 12.6 per cent of the maximum permitted which in this case is 1,872 square feet.”

The Board decided that “in the absence of any planning evidence to the contrary the long term effect on the character and appearance of the neighbourhood would be more than minor. Granting this variance may and probably would lead to similar applications . . .”

Appeal allowed: *Freedman, David, and the Committee of Adjustment for the Township of York, O.M.B. N-9140-65, 26th July, 1965.*

Chapter XXX

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Reduction in Lot Area — Minor Variance — An appeal by the owner of an adjacent property against a decision of the Committee granting an application authorizing a minor variance from the provision of the zoning by-law which requires a minimum lot area of 10,000 square feet. “The subject lot has an area of 9,911.6 square feet. The property is zoned R4 which permits an apartment building. All other provisions of the zoning by-law would be complied with. It is not possible to buy additional land within the R4 zone to increase the lot area.

“The appellant contends that the lot is not suitable for an apartment building because the land is not stable due to underground springs and that his property would be damaged by any construction and devalued by the presence of an apartment building.

“In my opinion the variance sought is a minor variance and is necessary and desirable for the development of the property in accordance with its zoning.”

Appeal dismissed: *Major, Robin G., and the Committee of Adjustment of the Borough of York, re an application by Milan Grdic, O.M.B. P-5911-68, 19th August, 1968.*

Chapter XXXI

Residential Use — Variance

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Apartment Building — Enclosed Balcony — Not a Minor Variance — An appeal by the original applicants and others against a decision of the Committee of Adjustment dismissing an application to enclose a recessed balcony with a thermo-pane glass front at the top floor level of an eleven-storey, co-operatively owned apartment building. The application was refused by the Committee on the grounds that “. . . the request is not reasonable and does not come within the meaning of a minor variance, while the granting of same could create an undesirable precedent.”

For the applicant it was stated “. . . that the variance, if granted, would eliminate a problem caused by ice, dirt and soot accumulating on the balcony and eventually finding its way onto the rugs in the apartment. The problem, the appellant testifies, is a continuing one but is more serious during the winter months. It was the testimony that the location of this particular apartment in relation to the air currents makes it more susceptible than others to the elements.”

The apartment building is of modern design and the balconies are recessed. If this space were enclosed the evidence indicated that there would be an excess in gross floor area of approximately 120 square feet which might be reduced to 100 net square feet when insulation was taken into consideration. The owner of the apartment unit submitted that “. . . the motivation in seeking a variance is not to provide additional space but merely to resolve a very troublesome problem.”

“Stuart I. Westland, a qualified planner, appearing before the Board upon the instruction of the Planning Director for the City of Toronto, stated in his evidence that the main concern from a planning viewpoint was that the present application, if granted, might constitute a precedent in the City of Toronto if the principle was accepted that balconies could be considered as part of the main floor space.”

The Board decided “After a full and proper consideration of the evidence adduced I am of the opinion that what is sought here is not in reality a minor variance. The section of *The Planning Act* governing minor variances is generally assumed to be a statutory remedy for those individuals who are unable for one reason or another to meet the requirements of a restricted area by-law. Such would not appear to be the case here since this modern, residential building has complied with the necessary requirements.”

“It is the evidence that balconies are not included in the calculated floor space of apartment buildings in the Toronto by-law and I am satisfied that any

variance granted in this regard could be construed as a precedent, adversely affecting the standards sought to be achieved throughout the city, particularly those affecting densities. In my opinion, bearing in mind the fact that the by-law does not contemplate consideration of balconies in calculating floor space, it may well be that what the Committee, and now this Board, is asked to do would in effect be tantamount to legislating, which is the prerogative of an elected council."

Appeal dismissed: *Heathaven Apartments Limited and others and the Committee of Adjustment to the City of Toronto, O.M.B. P-3524-67, 8th August, 1967.*

Declaratory Order of Approval — Duty of Assessor with Respect to Conformity — An appeal by the original applicant against a decision of the Committee dismissing an application for a variance.

"The applicant and her father purchased the subject lot in 1960 and subsequently erected an eight-suite apartment on the site, followed in 1961 by a permit to create a ninth apartment in the basement at which time 2 basement apartments were in fact built. In 1965 a basement recreation area was, without permit, converted into an eleventh apartment and it is as a result of an impending sale of the property that the subject application which, in effect, is for a declaratory order of approval was brought.

"At all pertinent times the maximum permitted number of suites in relation to the lot area was eight and the combination garage and parking areas for 12 cars would not satisfy a 125% requirement for the 11 suites. In addition to this, by reason of an amended zoning by-law passed in 1962, one side yard is now inadequate. If therefore the subject appeal were allowed the building would still need at least two further variances to become conforming.

"In my view the fact that the various suites have, from time to time, been assessed is not of moment, it not being the duty of an assessor to comment on conformity. It is enough to say that the creation of 11 suites where 8 would be the permissible maximum cannot be considered a minor variance and no hardship appears involved since the situation is the creation of the applicant/or her father. No one has objected to her operation, the matter only arising as a result of her desire now to conclude a profitable sale. Any approval would, in my view, more appropriately result by action of council . . ."

Appeal dismissed: *Bowes, Martha, and the Committee of Adjustment of the City of Kitchener, O.M.B. P-7023-68, 28th day of January, 1969.*

Erection of Triplex requiring fundamental change in land use by-law — Not a minor variance — An appeal by a number of objectors against a decision of the Committee granting an application for permission to remodel an existing duplex into a three unit apartment house “under the guise that the relief being sought was a minor variance. The zoning affecting the applicant’s property is residential in nature and restricts any greater density than a semi-detached dwelling or a duplex.

“The town council of Strathroy has enacted a land use by-law which, *inter alia*, sets out certain regulations in regard to *triplexes*. However, the land use map which is a part of the by-law does not provide for zoning which would permit the *erection of triplexes*. Therefore one can assume that the town council in its discretion has not seen fit at this time to permit triplexes in Strathroy.

“It is my opinion that what the applicant seeks here is not a minor variance but is a *fundamental change in the land use by-law of the town*. I think that the Committee of Adjustment in granting this approval has in fact usurped the function of the town council and has determined planning policy in that the result of the Committee’s decision injects an amendment to the land use by-law by providing for a triplex.

“Although it is not necessary to consider in arriving at a decision herein I note that had the relief sought been granted *there would have been four variances from the triplex regulations under the by-law* in that the frontage, side yard, minimum apartment floor area and set-back provisions of the by-law would have been violated, which in my opinion would by itself have been sufficient reason to deem this matter as not being a minor variance.”

Appeal allowed: *O’Hagan, Robert J., and others and the Committee of Adjustment of the Town of Strathroy, re an application by Lorne A. Dubs, O.M.B. P-4612-67, 17th April, 1968.*

Chapter XXXII

Commercial Use — Variance

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Driver Operated Car Wash — Deemed Not a Use Similar to an Automobile Service Station — The application was made for a variance in respect of a property in an R2, (residential use district) upon which there was an automobile service station, which had been in business for 20 years. The automobile service station was a non-conforming use.

The applicant sought permission to erect a building that would contain facilities necessary for washing automobiles. This would be done by the occupants of the automobiles, as no person would be employed in the operation of the equipment.

The washing of automobiles was not included in the list of uses permitted in an R2 zone. The Committee granted the application on the condition that a fence be erected, to prevent the passing of light from the lights of the vehicles which would use the facilities.

On appeal by the Minister of Municipal Affairs counsel for the Minister argued that the Committee was without jurisdiction to grant such an application.

Counsel for the corporation maintained “that the provisions of Section 32b (2) (a) (ii) of *The Planning Act* were applicable, as the proposed business was similar to the purpose for which this land was used on the day the by-law was passed.

“Section 32b (2) (a) (ii) allows a Committee, by its decision, to “permit the use of ‘such’ land, building or structure for a purpose that in the opinion of the Committee is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, provided that the land, building or structure continues to be used in the same manner and for the same purpose as is authorized by the decision of the Committee.”

“It would appear that Section 32b (2) (a) (ii) is the section of the Act that properly applies to this matter. It was argued that the proposed use of land is similar to the use on the day the by-law was passed.”

The Board decided that “after studying all the evidence that these uses cannot be found to be similar, within the meaning of the Act.”

Appeal allowed and the decision of the Committee of Adjustment set aside: *Minister of Municipal Affairs and the Committee of Adjustment of the City of Woodstock, O.M.B. N-9546-65, 20th September, 1965.*

Repair and Installation of Motor Vehicle Springs — Commercial Use In An Industrial Zone — An appeal against the dismissal of an application for relief from the provisions of the by-law to permit the repair and installation of motor vehicle springs in conjunction with the manufacture and assembly of springs which is a permitted use under the by-law.

The property is situated on the east side of Granger Ave. and Danforth Road and is zoned industrial. The zoning opposite is residential.

“The subject property is situated . . . immediately south of the property on which an auto body shop (a non-conforming use) is located. . . . Then to the south of the subject property there are two residential properties (non-conforming uses) followed by a variety of factory buildings, machine shops and similar uses. On the west side . . . in the residential zone in the vicinity of the subject property there are other non-conforming uses — two service stations and an auto body shop. Owners of nine properties had filed objections before the Committee but none appeared before the board.

“The owner of the residential property adjoining the subject property appeared as a witness in support of the appeal and asserted that neither the manufacture nor the repair and installation of springs, which had been carried on for several months as the owner mistakenly believed it was a permitted use, caused any objectionable noise, traffic problem or other nuisance. The evidence of Mr. Korosec that not more than six vehicles per day could be serviced with respect to repair and installation of springs and that there was parking accommodation for eight vehicles on the premises was not disputed. On the evidence the Board is satisfied that the variance requested would not create a traffic problem or other nuisance.”

“Permitted lot coverage by buildings for manufacturing in an industrial zone is 60 per cent whereas lot coverage permitted in an industrial commercial zone is 40 per cent. The building plans in this case indicate a lot coverage of approximately 45 per cent. Because of the limited commercial aspect of this enterprise the Board is satisfied that the lot coverage is not more than a minor variance.”

“The question remaining then is whether *a commercial use in an industrial zone* is in this case more than a minor variance. An application such as this must be judged on its own merits and in the light of the evidence presented to the Board. It is argued that the appeal should be dismissed because the use contemplated is permitted only in an industrial commercial zone or an industrial district commercial zone. By-law . . . lists the only uses permitted in such zones and the only use so listed which bears any resemblance to the proposed use in this case is a public garage.

“The repair and installation of springs is only one and a minor one of the many activities of a public garage and it appears unreasonable that this enterprise which is largely manufacturing should be placed in the category of a public garage simply because of the one phase of its activities. The repair and installation of springs is in a sense custom manufacturing and assembling closely related to its main activity. It is a service which is normally performed by similar enterprises engaged in the manufacture and assembly of vehicle springs. Moreover, there was no evidence that the use contemplated would have a harmful effect of any significance on the properties in the vicinity.”

Appeal allowed: *Korosec, Maria, and the Committee of Adjustment of the Township of Scarborough, O.M.B. N-8072-64, 31st December, 1964.*

Trucking Depot — Reservation for Landscaping — By-law not shown to be unreasonable — An appeal by an objector against a decision of the Committee granting an application for relief to allow a transport company to encroach upon a 30-foot landscaping area required by the by-law.

“The lands with which this appeal is concerned are zoned for industrial use and are used as a trucking depot or yard. The restricted area or zoning by-law of the City of Brockville requires a 100 foot yard to be provided on industrial lands where they abut a residential zone, as well as that 30 feet of such yard closest to a residential zone must be reserved for landscaping. The subject lands abut a residential zone. The trucking company maintain that this requirement will prevent them from expanding their operations as they must encroach on the 30 foot landscaped area in order to manoeuvre and park their vehicles. The Committee of Adjustment granted an application for relief from the terms of the by-law. Counsel for Mrs. Rowan and several ratepayers on their own behalf objected to the relief given by the Committee of Adjustment on the grounds that it would bring the operation of the transport company closer to residences and would so increase the volume of noise which they now state is sufficient to cause them inconvenience.

“The evidence dealt almost exclusively with the difficulties which would be experienced by the transport company if they could not encroach on the 30 foot landscaping area already referred to in the decision. However, there was no evidence to show that the requirement of the by-law was unreasonable or why this particular property should receive relief from a requirement that

applies to all similar properties in the City of Brockville. I do not believe that it is sufficient to argue inconvenience in a situation such as this when all other properties in a similar position are faced with the same regulation. I do not believe that any valid reason has been advanced to support a granting of relief.”

Appeal allowed: *Rowan, Alma, and the Committee of Adjustment of the City of Brockville, re an application by McNeil Transport Limited, O.M.B. P-7869-68, 14th May, 1969.*

Chapter XXXIII

Parking Requirements — Variance

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Hairdressing Establishment in Home — Variance to Off-street Parking —

An appeal against the refusal of the Committee to allow a variance to off-street parking on the grounds that “A similar variance had been already granted to an immediately adjoining property. To grant a further variance would not be desirable. . . . No adequate parking is available on the property.”

The property is in a residential zone and the by-law permits a hairdressing establishment as a home occupation in a residential zone, and requires one off-street parking space to the rear of the building line, for each hairdressing chair. “The evidence of the appellant was that there was adequate parking space on the driveway which extends from the street to the front of the garage. The appellant advised the Board that the hairdressing business formerly conducted on the next door property was no longer in existence.

The Board stated “I cannot find anything in the by-law which would prevent the Committee from allowing a variance based on whether or not a hairdresser was already established in the vicinity. The second reason given by the Committee was that no adequate customer parking is available on the property. The zoning by-law is quite definite in this respect in stating that all off-street parking must be to the rear of the building line and I have some doubts that it is proper to grant a variance of this kind in the face of such a prohibition . . .”

“A variance which would allow parking in the front yards of a modern housing development would not appear to be reasonable.”

Appeal not allowed: *Lackenbauer, Anna, and the Committee of Adjustment of the City of Kitchener, O.M.B. N-9123-65, 12th July, 1965.*

Impracticability of Acquiring Additional Land for Parking — No Evidence As To — Condition Valid — An appeal by the original applicant against a decision of the Committee imposing a condition to the granting of an application for a variance to permit the renovation of an existing business office in the semi-basement of the subject property, contrary to the provisions of the by-law. The building is a non-conforming use.

The Committee decided: “In the opinion of the Committee the application is for a use which would comply with Section 32b (2) (a) (ii) provided that two additional off-street parking spaces are provided over and above the existing parking.”

“The applicant before the Committee is the appellant in this case and it is the condition only which is being appealed.”

“It is the appellant’s position that since a parking lot 50’ x 25’ at the present time serves the whole building with its varied uses, the Committee goes beyond its jurisdiction in requiring the appellant to acquire more land, since the intended residential use is not as intense a generator of traffic as the existing one would be. It further contends that the use proposed is much more compatible with the uses permitted by the by-law than is the present office space. “Counsel for the township submitted that at the time of the passing of the by-law, the chiropractor’s office had been established and it was not too much to expect the appellant to provide additional parking in return for the variance sought, especially so, since the existing parking facilities fall far short of the normal by-law requirements.”

An effort was made to purchase adjacent land but the price was deemed too high. The Board stated “While it may be argued that the condition imposed by the Committee creates a hardship to the appellant, the fact remains that when applications are made to the Committee to exercise the discretion vested in it by the statutes an opportunity is provided, if deemed necessary, of bringing certain non-conforming uses closer into relationship with conforming properties in the area. At any rate, in the absence of evidence to indicate the impracticability of acquiring additional lands for parking. I do not believe that the decision of the Committee of Adjustment should be interfered with.”

Appeal dismissed: *Blue Chip Finance Company Limited and the Committee of Adjustment of the Township of East York, O.M.B. N-8733-65, 4th May, 1965.*

Industrial Firm — Reduction in Parking Facilities — No Additional Employees — An appeal by an objector against the decision of the Committee of Adjustment granting an application to permit the erection of a small office addition to an industrial firm. “The respondent in its original application stated that it is unable to provide the parking required by the by-law and as such sought relief from the provisions thereof.”

“I find as a fact that the addition would have a floor area of 770 square feet and would not result in an increase of the number of persons employed at the plant. According to the by-law this new addition would necessitate the creation of three additional parking spaces. The appellant, supported by a number of witnesses, objects to the relief as sought on the ground that the street parking, already at a dangerous level, would be further increased to the detriment of the area. I am satisfied that there is a parking problem in the

street in the vicinity of the plant, but I am not satisfied fully that the plant is the sole contributor to this and neither am I satisfied that the creation of additional parking spaces on the premises of the respondent would alleviate the situation. I further accept that the offstreet parking now provided by the respondent is not fully utilized. It is made to appear that employees prefer to use street parking and this is a matter to be dealt with by by-law enforcement officers of the City of Galt and not by this Board.”

“It is not necessary to say that the plant has 194 employees and provides 110 parking spaces. This fact has not been seriously challenged. Included in the above figure are additional parking spaces provided recently by the respondent which additional provision would more than adequately balance the three spaces taken away if the addition is permitted.”

“On the whole I am satisfied that the appellant has not met the onus incumbent on him to show that the minor variance, if allowed, would frustrate the general intent and purpose of the by-law.”

Appeal dismissed: Palvetzian, Charles, and the Committee of Adjustment of the City of Galt, O.M.B. P-3751-67, 26th July, 1967.

Landscape Area Used for Parking — Contribution to Amenities of General Neighbourhood Required — An appeal by the original applicant against a decision of the Committee dismissing an application to allow the applicant “. . . to use a portion of the 30 foot front yard for parking whereas according to By-law 7625 it should be landscaped. The property is in an industrial zone and fronts on the west side of Rivalda Road and flanks on the south side of Bradstock Road. North York has a rather unusual provision relating to parking in this zone. If the property has a frontage of 100 feet or less the whole of the front yard may be used for parking but if the frontage exceeds 100 feet then none of the front yard may be used for parking. It is because the frontage of the applicant exceeds 100 feet that he has to apply for this variance. Its frontage is a little over 200 feet and it desires to use about 60 feet of this frontage for parking.

“The applicant has substantial parking in the rear of its plant, but is anxious to have parking at the front for customers and salesmen attending on business so that they can go directly into the company’s offices and not have to park in the rear and enter through the rear entrance and pass through the factory space before they are able to reach the office area.

“Pictures were filed on behalf on the applicant indicating that there were several properties in the neighbourhood where parking was provided in the front yard presumably because such properties had a frontage of 100 feet or less.

“Apparently no one appeared before the Committee of Adjustment in opposition to the application nor did any one appear before me. There was however, a letter sent to the secretary of the Committee of Adjustment by Mrs. T. G. Montpool who lives on the south side of Bradstock Road, to the west of the subject property.

“She does not complain of parking in the front yard but complains that the rear yard parking lot is not properly maintained and rains carry mud from the rear parking lot on to the sidewalk on Bradstock Road. Apparently the problem is accentuated by the fact that trucks going to the premises to the south of the subject property use this parking lot rather than the lane appurtenant to such premises to obtain entrance to the rear.

“Because other premises in the area have parking in their front yards, the application is not without merit. I think this is *a good case for application of the principle that he who seeks equality should do equality*.

“I would therefore recommend that the appeal should be allowed and that the application to the Committee of Adjustment should be granted subject to the following conditions:

“(1) The parking would be limited to the south sixty feet of the front yard of the subject property;

“(2) That the applicant grade its rear parking lot so that the drainage will be away from the sidewalk and will place on such parking lot compacted crushed stone to a depth of eight inches and maintain such parking lot free of dust;

“(3) That a barrier be erected along the south limit of the property so that trucks can not enter this parking lot from the premises to the south.

“I think if these conditions are fulfilled their contribution to amenities of the general neighbourhood will more than offset any deleterious effect front yard parking will have on such neighbourhood.

“I also recommend that the Board’s formal order do not issue until counsel for the applicant advises the Board that the above work has been completed.”

Appeal allowed subject to conditions: *Stuart House International Limited and the Committee of Adjustment of the Borough of North York, O.M.B. P-6599-68, 6th May, 1969.*

Onus on Applicant to Prove Adequacy of Parking — Creation of Additional Apartment — An appeal by the Borough against the decision of the Committee granting upon a condition an application for a minor variance.

“Although the subject lands have, since 1960, been zoned for single family residential purposes, the evidence of the Planning Director was to the effect that he regarded this as a holding type of zoning, that a substantial amount of denser development has occurred in the area and that he had favoured 11 suites for the site upon the occasion in 1962 when council passed By-law 7058 permitting 10 suites as presently existing. An additional basement room would have formed the eleventh apartment but following By-law 7058 has been made available for, but not extensively used as, a recreation room. The completion of that space as an eleventh apartment is now desired and was approved by the Committee on the assumption that the required parking space is available and a condition that the apartment be used for the accommodation of a janitor.

“The appeal of the Borough against that decision is confined almost entirely to its contention that parking, particularly as it relates to keeping 15 feet from a window, cannot be complied with. The evidence in that regard was not very convincing on either side but since the acceptability was an assumption of the Committee I consider it an obligation of the applicant to prove adequacy in which he has failed.

“Furthermore it was the expressed desire of the applicant to provide space for a janitor so as to reduce vandalism in the building. By his own admission however a janitor in such a building could not be expected to be full-time.

“When it is realized, as well, that the desire is to convert a basement room into an apartment without knowledge that a permit would be granted there appear to be too many imponderables to justify considering authority by the Committee or this Board to create an additional apartment a minor variance.”

Appeal allowed: *East York, the Borough of, and the Committee of Adjustment of the Borough of East York, re an application by Anton Wolf, O.M.B. P-8812-69, 27th June, 1969.*

Parts of By-law to be treated as having equal importance — Off-street Parking Requirements not “Minor Part” — An appeal by the Minister against a decision of the Committee granting an application for relief from provisions of the by-law with respect to off-street parking.

“The evidence showed that the Co-operators Insurance Association erected an office building in Owen Sound some years ago. Some 107 persons are now employed in this building. The Association requires additional floor space for their business and purchased the adjoining property. This property had originally been used as a dwelling and was latterly occupied by the Y.M.C.A. The existing building would be razed and a new office building would be erected. The by-law requires such a building to provide 60 *off-street parking spaces*. The building, as planned, would leave space on the site for 16 *off-street parking spaces*. An application was made to the Committee of Adjustment for the City of Owen Sound for relief from the provisions of the by-law, so as to permit 16 spaces only. Questions Nos. 6 and 7 on the application form read:

6. “Nature and extent of relief applied for:”
“Zoning requirement of one parking space for every 300 square feet of usable office space:”
7. “Why relief is required (that is why it is not possible to comply with the by-law):
“Insufficient Land: requirement is excessive to reasonable need.”

The Committee heard the application and granted it giving these reasons:

“The Association is planning to construct a new 4-storey office building 60' x 100' on the site and is requesting relief from parking requirements of By-law 2999 which requires one parking space (10' x 20') for each 300 square feet of building floor area. The Association can provide 16 parking spaces whereas the By-law requires a total of 60 parking spaces.

“The Committee after hearing the objections from three property owners in the vicinity of the proposed new building and being assured by the representatives of the Insurance Association that every effort had been made to buy additional land for parking and that efforts would be continued to acquire such additional land in the future, approves the application and it is so ordered.

“The Committee is also of the opinion that any parking problems which do exist on 1st Avenue West would be alleviated by strict enforcement of the present parking regulations or by the installation by the City of parking meters.”

“The evidence showed that the existing office building of the Association provides 3 off-street parking spaces for customers or visitors and a further 7 spaces for officials and staff. The existing building apparently creates a daily demand for 30 spaces and 20 vehicles must be parked elsewhere. The proposed building will house activities which will not attract the public. The activities or operations would be transferred from the present building together with the necessary staff. An additional 3 employees will be hired. The new building could provide 16 parking spaces, the existing building would continue to provide 10 spaces. Although the proposed building would add a substantial area of floor space the evidence was that the level of activity would be the same as at present insofar as the use of off-street parking was concerned. The cost of additional land to provide the required parking was said to be \$100,000 and efforts to acquire such land had not been successful in any event.

Council for the Minister, in his argument, “said that the appropriate legislation was Section 32b (1) of *The Planning Act*, and that *the reduction in the number of off-street parking spaces from the 60 required by the by-law to the 16 spaces applied for was something more than a minor variance*. This in his opinion left the Committee without jurisdiction and so the appeal should be allowed.”

“The City and the applicant produced evidence which gave the particulars of the proposed use, which it was maintained would be of great benefit to the City. I believe that the evidence shows this to be so. It was also maintained that the off-street parking regulations in the by-law were unreasonable, particularly for the use in question, which would attract few vehicles. The parking to be available at the two buildings would be adequate. The evidence showed that the City, realizing that the present off-street parking requirements could hinder or prevent desirable development in the central area, was in the process of providing lots for public parking and it was expected that the present off-street parking requirements would be eliminated or greatly reduced in the future. It was also argued that the off-street provisions were a ‘minor part’ of the effective by-law and because of this the Committee should have greater latitude in granting a variance in respect to that part of the by-law.”

Two owners of adjoining properties made representations to the Board concerning off-street parking. One did not continue his objection when the position of the parking area was shown to him.

The Board stated: “I believe that the Committee and this Board must consider the regulations that are in effect when these matters are being considered

by them, and that evidence as to future amendments cannot be given any weight.

“It would seem that the Committee and this Board cannot accept any part of a by-law as being a “minor part”, I believe that the parts of the by-law must be treated as having equal importance.

“The Council may, of course, at any time, amend their restricted area by-laws and an overall reduction in the off-street parking requirements could be made or a scale of off-street parking requirements could be introduced, related to the demands of the various types of land uses. The particulars of these would be determined by Council.”

“I believe that the evidence in this matter shows that the Committee has granted something more than a minor variance and which I believe does not maintain the general interest and purpose of the By-law.”

Appeal allowed: Minister of Municipal Affairs and the Committee of Adjustment of the City of Owen Sound, re an application by Co-Operators Insurance Association, O.M.B. P-4887-67, 13th March, 1968.

Variance from Parking Requirements — Interest in space on adjacent property — An appeal by the original applicant against the refusal of the Committee to grant the variance requested.

“To understand the problem involved in this application it is necessary to give some background.

“A developer owned a property at the north-west corner of Eglinton Avenue West and Snider Avenue.

“A building permit was applied for to erect four stores with apartments above on the westerly portion of the parcel and five stores with offices above on the easterly portion of the parcel.

“The York zoning by-law requires in the case of apartments over stores a rear yard of 400 feet with one parking space per dwelling unit. There is no requirement for rear yards or parking spaces when there is an office over a store.

“The rear yard behind the westerly four stores is ample to comply with the by-law. There is practically no rear yards in the rear of the easterly five stores,

only a right-of-way about 12 feet wide; to the north of this right-of-way is a Hydro substation.

“The developer made an application to the Committee of Adjustment to provide for apartments rather than offices on the eastern portion of the property and on the 30th of September, 1968, this was rejected by the Committee of Adjustment in its second meeting of 1968.

“The by-law enforcement officer inspected the property on December 12, 1969 and found the subject property contained an apartment and subsequently instructed the owner that the by-law should be complied with.

“The present applicant purchased the property together with a one-ninth interest in the parking area to the rear of the stores on the western portion of the parcel which purportedly gave him an area of 360 square feet. The applicant apparently did not know when he purchased the property that the apartment use was in breach of the by-law.

“In the Board’s opinion the Committee of Adjustment was right in refusing the application.

“The purported parking provision is too far distant from the subject lands to comply with the by-law and there is no possibility of this area complying with the rear yard requirement of 400 feet.

“This case would appear to indicate that where a person is purchasing a property with mixed uses such as the subject property he would be well advised to make his offer to purchase conditional on the present use being in accordance with the existing zoning by-laws.

“It also indicates that where an application is made for a division of a property, such as this original holding, serious consideration must be given to the granting of such a severance; to allow a conveyance of a one-ninth interest in an area satisfying the rear yard requirement of a zoning by-law would at least seem open to question.”

Appeal dismissed: *Benincasa, Allegro, and the Committee of Adjustment of the Borough of York, O.M.B. R-3244-70, 28th December, 1970.*

Chapter XXXIV

Summer Cottages — Conversion for Permanent Use

Cottage — Summer — Conversion to Permanent Dwelling — Deficiency
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Cottage-Type Residence — Replacement of with more Permanent-Type
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Cottage Zone — Addition of Basement to Existing Dwelling — Not
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Minimum Lot Area — Summer Cottage — Renovation for Year Round
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Cottage — Summer — Conversion to Permanent Dwelling — Deficiency in Lot Area — Consideration of Right of Way — An appeal by the owner of a summer cottage against the decision of the Committee refusing an application for a variance to permit the applicant to “build a back kitchen on the building and to change the cottage to a permanent residence.”

The by-law provided that “no cottage shall be converted to a permanent dwelling house unless the lot on which it is erected contains not less than 15,000 square feet.”

An exhibit filed showed that the lot in question contained 5,726 square feet. “It also has certain rights of way and it was contended for the applicant that parts of these rights of way could be considered as appurtenant to the lot which would increase the area to 10,234 square feet.”

The Board decided that “Even though these rights of way could be considered as adding to the lot area, which is very doubtful, the resulting deficiency is much too great to be considered a minor variance. Even though it could be so construed the evidence adduced for the township clearly showed that this was a type of development which the township was very anxious to prevent for reasons which are very sound.”

“I find that the variances requested are not minor.”

Appeal dismissed: *Hoyle, Percy, and the Committee of Adjustment of the Township of Wainfleet, O.M.B. P-560-65, 14th April, 1966.*

Cottage-Type Residence — Replacement of with more Permanent-Type Structure — Public Road Frontage Considered — An appeal by the original applicant against the decision of the Committee, dismissing his application for a variance to permit the erection of a cottage-type residence to replace an existing cottage.

“The appellant wishes to erect a more permanent-type structure so that it could be used from time to time throughout the year.” Evidence indicated that approximately forty cottages in this area are capable of being used throughout the year, and it was argued that “replacement of the existing structure would be an improvement and appropriate to the uses in this area.”

The area is zoned agricultural, and “. . . in such a zone a one family detached residence is permitted subject to certain lot area, frontage and yard restriction.

The by-law does not distinguish between non-permanent and permanent-type residences.”

The application for a variance was made necessary because “. . . the by-law requires a frontage of one hundred feet on a public road. The subject property does not have any frontage on a public road.”

The Board decided “. . . the provision requiring public road frontage is fundamental to the by-law, and to release this property completely from such requirement can not be construed as a minor variance which is compatible with the general intent and purpose of the by-law.”

Appeal dismissed: *Jessop, H. Frank, and the Committee of Adjustment of the Township of Wellesley, O.M.B. P-526-65, 11th October, 1966.*

Cottage Zone — Addition of Basement to Existing Dwelling — Not Minor Variance — An appeal by the Planning Board against a decision of the Committee granting an application for permission to put a basement under an existing residence to permit the installation of a furnace thereby making the building fit for year round occupancy.

The original appellant stated that when he purchased the property he had no idea that he would not be permitted to live in it permanently and at the time of passing of the by-law he was living there himself although his family did not move into it until later.

The Board stated “I am satisfied that this application could not be classed as a minor variance although it was apparently dealt with as such by the Committee. It would, however, appear to be within the jurisdiction of the Committee under Section 32b (2), but even though it may come under this sub-section, I think the appeal is well taken on general principles. The intent of the official plan and by-law is to confine permanent residential development to certain defined areas and to prevent the conversion of summer dwellings to year round residences, this policy being adopted for the general good of the municipality. To allow this application would clearly be to set a precedent, which would influence decisions on future applications.”

Appeal allowed: *Shuniah Planning Board and the Committee of Adjustment of the Township of Shuniah, O.M.B. P-2334-66, 8th February, 1967.*

Minimum Lot Area — Summer Cottage — Renovation for Year Round Occupancy — Variance in Lot Area — An appeal by the original applicant against a decision of the Committee of Adjustment refusing an application to authorize the renovation of a thirty year old summer cottage for year round occupancy.

The appellant wished to put a foundation under the cottage and to generally renovate it. "There are no services in the area, the nearest water main being a mile or so away. The lot has a frontage on the lake and the plan shows a 20 foot lane at the rear of the lot as well as a 33 foot road allowance along its western limit. The 33 foot road allowance leads to a 66 foot street two lots away to the north. The plan is subject to a by-law of subdivision control.

"The size of the lot is 45 feet by 150 feet for an area of 6,842 square feet, whereas the zoning by-law requires 50 feet and 15,000 square feet respectively where services are not available."

The Board stated "The Committee appears to have based its refusal of the application principally upon the fact that the lot does not have direct access to a 66 foot allowance. Under the circumstances here this may or may not be reasonable but what to me is of more weight is the variance in lot area. 15,000 square feet is a generally accepted standard throughout the province where there are no services and in my opinion the variance required in this regard is too great. Having recently purchased the property the applicant was or should have been aware of the provisions of the by-law."

Appeal dismissed: Oomen, Peter, and the Committee of Adjustment of the Township of Pickering, O.M.B. P-1840-66, 8th December, 1966.

Chapter XXXV

Structures

Erection of Large Sign — Limitation in By-law Unrealistic 200

Floodlighting of Tennis Courts — Extension of Structure — Costs on
Appeal to the Board 200

Height Limitation Exceeded by Existing Structure — Erection of Wall
Contrary to By-law 201

Sign — Uniform Identification of Ford Dealerships — Planning Board
“Interested Party” — Sign not “Enlargement or Extension of the
Building or Structure” — No Board Order as to Costs 202

Silos — Loading and Unloading of — Infringement on Landscape
requirements 204

Erection of Large Sign — Limitation in By-law Unrealistic — An appeal by the original applicant against the decision of the Committee dismissing an application to allow the erection of a sign with an area of 200 square feet. The by-law only allows two signs of 30 square feet each.

In fact the sign had been erected without any permit with the applicant and the sign company both contending that it was the responsibility of the other to obtain the permit.

“The sign has two sides and there was some dispute as to whether each side was 200 square feet or whether each side was 100 square feet, even if the latter, it is greatly in excess of that permitted by the by-law which would only allow 30 square feet on each side.

“The main evidence on behalf of the applicant was that the Committee of Adjustment had granted a variance allowing a sign of 80 square feet on each side to be erected in this area. This also would seem to be greatly in excess of that permitted by the by-law. It was also suggested that there are other signs in the area that were erected contrary to the provisions of the by-law.

“The evidence also indicated that the Planning Board is making a study of the sign provisions in the by-law. If the Committee of Adjustment thought a sign with 80 square feet on each side was suitable for this area, it would not appear that the 30 square foot limitation in the by-law is very realistic. I therefore recommend that my final report be delayed until the Planning Board has made this report and a copy has been filed with this Board.”

Sam Lolas DeLuxe Drive-In, and the Committee of Adjustment for the City of Sudbury, O.M.B. P-2323-66, 7th February, 1967.

Floodlighting of Tennis Courts — Extension of Structure — Costs on Appeal to the Board — An appeal by the Credit Valley Lawn Tennis Club against a decision of the Committee dismissing an application which read as follows:

“To erect floodlights for evening play on two additional tennis courts . . . and extend evening playing hours from 10 p.m. to 11 p.m.”

“The history of this matter would appear to be as follows: the relevant zoning by-law was passed on April 10, 1953 and zoned this area residential. At that time the tennis courts did not have any lights and were used only during the day time. They consisted of four courts.

“In 1961 or 1962 meetings were held with the residents and some kind of an informal agreement was reached that the Club could erect lights for two courts and playing would cease at 10 p.m.

“I question whether this agreement had any legal validity.

“I agree with the Committee of Adjustment that they had no jurisdiction.

“If the erection of the lights was illegal then, then it would seem to me that there can be no ‘extension of a structure’ and even if it was legal it does not seem to me that the erection of additional lights can be considered ‘an extension of a structure’.

“However as I had to report to the Board I heard the merits of the appeal.

“In my opinion the appeal should also be dismissed on the merits.

“It is evident that this use is unsuitable in a residential area. The glare from the lights is a nuisance, the noise from the people playing particularly at night is a nuisance and parking problems are created for the residents. There is also a problem of dust blowing from the surface of the courts.

“I think it is evident that if the Club desires to expand their activities they should seek a new location.

“As the Club is a non-profit organization I will not direct that it should pay the costs of the objectors.

“It would not appear that the Club is a legal entity but I think that any individual who makes any similar appeal to this Board should realize that he might well be directed to personally pay the costs.”

Appeal dismissed: *Credit Valley Lawn Tennis Club and the Committee of Adjustment of the Town of Mississauga, O.M.B. P-7287-68, 9th January, 1969.*

Height Limitation Exceeded by Existing Structure — Erection of Wall Contrary to By-law — An appeal by the original applicant against a decision of the Committee dismissing an application to allow the erection of a wall 50 feet in length by a height of 8 feet 6 inches “the wall is already erected at the rear of the property and also twelve feet along each side lot line.”

“Under the by-law the fence is classed as a structure and its height is limited to five feet. The Committee of Adjustment refused the application on the grounds it was not a minor variance.

“The Board concurs in the view of the Committee as it does not consider the effect of the variance requested can be classed as minor.

“It seems to the Board that there is some merit in the view that people in the position of the applicant should be able to erect fences of the type requested here but in the Board’s view an amendment to the by-law would be necessary before this could be done.”

Appeal dismissed: *Iaver Investments (1963) Limited and the Committee of Adjustment of the City of Toronto, O.M.B. P-5507-68, 21st October, 1968.*

Sign — Uniform Identification of Ford Dealerships — Planning Board “Interested Party” — Sign Not “Enlargement or Extension of the Building or Structure” — No Board Order as to Costs — An appeal by the Port Colborne and Suburban Planning Board against a decision of the Committee granting an application to erect a sign which could not be erected under the terms of the by-law.

“The evidence in this matter showed that the Ford Motor Company has embarked on a programme of uniform identification for Ford dealerships. This is to be accomplished by the erection of a standard sign or signs at such places of business. The size of the sign to be erected is related to the size of the dealership, that is to say, the volume of units sold annually. A part of this programme is the removal of any non-compatible signs when the new signs are installed. The applicant in this matter, Mr. Donald W. C. Ford, wished to have such a sign erected at his place of business which is a Ford dealership . . . in a commercial zone and all the activities that are carried on are permitted uses under the zoning by-law of the city which is By-law 441. However, there are some existing signs which are not in conformity with the provisions of the by-law and from the evidence it appears that these signs were in place before the passing of By-law 441. The regulations as to signs appear in section 6.12. The proposed sign would be classified as a *ground sign* and subsection (b) of this section requires such ground signs to have an *area of not more than 32 square feet*. The proposed sign would have an area of 119 square feet. The existing signs that would be removed when the new sign is erected have an area in excess of 200 square feet.”

The Committee of Adjustment granted the application and noted among their reasons that "the sign being in the range of those used in the World Wide Scheme, that such a sign will greatly enhance the property, especially due to the fact that the signs located on the property and building at present shall be removed."

"The Committee of Adjustment sat on November 14, 1967, on this matter and instructed the Secretary-Treasurer to write to the members of the municipal council, with a copy to the Planning Board, requesting an amendment to the sign regulations as they appear in the zoning by-law. This letter was mailed on November 23, 1967, and the evidence of the chairman of the Planning Board was that no amendment has yet been recommended to the municipal council."

"The appellant contended that this was not a minor variance and that if this matter succeeded and the sign was erected as proposed other applications would follow and the intention of the zoning by-law to control sign sizes would be frustrated. *For the applicant it was argued that the Planning Board is perhaps not an interested party within the meaning of Section 32b (12).* As they had not considered this matter before the Committee of Adjustment had it before them and they did not object to the Committee of Adjustment. However, I believe the wording of the subsection "or any other person who has an interest in the matter" does include this planning board under these circumstances. *It was also argued by the applicant that section 32b (2) (1) is applicable and that the proposed sign is "the enlargement or extension of the building or structure."* The existing signs in my opinion cannot be said to be a *structure used for a purpose prohibited by the by-law*, however, I believe it is correct to say that they are non-conforming in the sense that they are larger than the maximum areas permitted by the by-law. I do not accept the argument which was made, *that the new sign can be called an enlargement or extension of the building or structure*, because it would appear that if a structure is to be enlarged a part of the original structure must continue to exist after the enlargement. In the subject case the old sign would be removed as would other signs on the building and a large sign on a standard would be erected on the lot, so I do not believe that this section of *The Planning Act* is applicable."

"In considering all of the evidence I believe it was shown that the proposed sign would be an improvement; that it would have a far better appearance than the existing signs and it appears to have been very carefully engineered. *I believe that the Committee of Adjustment in writing their letter of November 23, 1967, is performing one of the functions that a Committee of Adjustment should perform*, that is, to advise the council and the Planning Board where it

seems desirable that amendments should be made to the zoning by-law. However, the fact remains that the Committee of Adjustment and this Board are faced with the restricted area by-law and its regulations that are in effect at the time matters are before the Committee or this Board. A reading of By-law 441 indicates that the proper section is 6.12 (b), that the proposed sign is in fact a ground sign and it is quite clear that the maximum area of such a sign is restricted to 32 square feet.”

“This being the case I do not believe that it is reasonable to grant the variance sought to permit a sign of 119 square feet.”

“The Board *is asked to make an order as to costs*. The Board’s practice is not to award costs in cases such as this and I do not recommend that the order as requested be made.”

Appeal allowed: *Port Colborne and Suburban Planning Board and the Committee of Adjustment of the City of Port Colborne, re an application by Donald W. C. Ford, O.M.B. P-4951-61, 8th April, 1968.*

Silos — Loading and unloading of — Infringement on landscape requirements — An appeal by objectors against a decision granting an application for a variance from the landscape requirements of the by-law. By-law No. 10241 “requires a 25-foot landscaped parcel of land where an industrial zone abuts a residential zone. The application for minor variance granted by the Committee of Adjustment in this matter would allow the applicant’s tenant to retain existing concrete silos on that required landscaped parcel to the extent that they would infringe on that area some 3 feet 2¼ inches on the north limit and 2 feet 7½ inches on the south limit of the area.. The appellants and other objectors are those residents located immediately to the west of the subject property . . .”

“Construction of the aforementioned silos commenced after February 11th, 1970, at which time a building permit was issued for same by the Borough. Filed as Exhibit 3 are the plans submitted, clearly indicating Borough approval, as well as the intention to locate the silo area 21 feet 6 inches from the residential boundary to the west. On March 25th the applicant’s tenant received a letter from the Borough indicating concern over the location of the silos, and this was followed by a further communication revoking the building permit apparently because of the infringement on the landscaped area. At this juncture the structures in question were 90 per cent completed.”

“In view of the aforementioned approved plans and a previous decision of the Committee of Adjustment affecting these lands, I do not believe that the applicant’s tenant acted unreasonably or in ignorance of the requirements of the by-law.

“Exhibit No. 2 in this matter is a decision of the Borough Committee of Adjustment which reads in part as follows:

“It is the decision of the Committee of Adjustment to authorize a variance to the provisions of By-law No. 10241, to substitute the 25-foot wide landscaping strip by the above-mentioned chainlink fence and hedgerow, for the following reasons.

“The date of that decision was July 2nd, 1963. The fence mentioned is a 7-foot chainlink fence and the 5 feet of land abutting the fence was to be planted with hardy hedgerow.

“In my opinion the objections voiced by one of the appellants and another objector who gave evidence, were directed at the use of that 25-foot strip by large vehicles both loading and unloading into the concrete silos. This is in my view a direct result of the 1963 decision of the Committee and not directed against the position of the silos. I am reinforced in this view by the objectors, who admitted that the removal of the silos some 2½ feet further east would not in any way lessen the nuisance to them.”

“In view of the above, I am of the opinion that what is sought *in this application* is reasonable and maintains the intent and purposes of the zoning by-law.”

Appeal dismissed: *Schlag, Melanie, and Hugh McKendry and the Committee of Adjustment of the Borough of Scarborough, re an application by Alliance Avenue Holdings Limited, O.M.B. R-2690-70, 30th November, 1970.*

PART V

NON-CONFORMING USE

Chapter XXXVI

Finding of Continuous Use

Automobile Wrecking Business — Finding of Continuous Non-Conforming Use — Not within Jurisdiction of the Board 210

Continuance of Non-Conforming Use — Types of Activity of same general Purpose 210

Automobile Wrecking Business — Finding of Continuous Non-conforming Use — Not Within Jurisdiction of the Board — The lands of the appellant were located in an M2 industrial zone and for several years an automobile wrecking business had been conducted on at least part of the property as a non-conforming use.

A dispute arose between the appellant and the city as to whether such use had been continuous since the passing of the zoning by-law applicable to these lands.

The appellant sought a finding by the Board that “the use has been continuous and that she is entitled to carry on the business as in the past.” The Board stated “In respect of a non-conforming use, a Committee of Adjustment upon an application under section 32b of *The Planning Act* may permit an enlargement or extension of the building or a change in use that is similar to the existing use or more compatible with the uses permitted under the by-law. This Board has the same jurisdiction on an appeal from the decision of the Committee. The application to the Committee and the appeal to this Board do not request the exercise of any of the above-mentioned powers.”

“Granting the relief sought by the appellant is not within the jurisdiction of this Board . . .”.

Appeal dismissed: *Bilow, Ruth, and the Committee of Adjustment of the City of Kingston, O.M.B. N-9698-65, 6 May, 1966.*

Continuance of Non-conforming use — Types of Activity of same general purpose — An appeal against the decision of the Committee which would permit the applicant to enlarge or extend the larger of two buildings used as a nursing home by the erection of a two-storey addition at the rear of the larger building.

“From the evidence adduced at the hearing, this Board finds as follows:

1. By-law 6593 of the City of Hamilton was passed on July 25, 1950.
2. That by-law designates an area that includes the subject property as a “C Zone” and prohibits in such zone the use of land and the erection and use of a building for the purpose of a maternity hospital or a nursing home.
3. On the day of the passing of the by-law, the building for which an extension is now proposed was in existence and in use as a maternity hospital: Exhibit No. 2.

4. The subject property was vacant from October 20, 1950, until February 22, 1952: Exhibit No. 2.

5. On March 14, 1952, the subject property was sold by registration of a deed of conveyance to Ethel Rosetta Townsend: Exhibit No. 1.

6. Since March 14, 1952, the subject property has been used continuously for the purpose of a nursing home.

“The Board does not consider the change from a maternity home to a nursing home to have been a change of use, but regards both uses as types of activity of the same general purpose, as in the decision of the Court of Appeal in the case of *Regina v. Cappy* reported in (1952) O.W.N. 481.

“Since the legal non-conforming use in question, originally sanctioned by subsection 6 of Section 390 of *The Municipal Act*, R.S.O. 1950, c. 243, was interrupted from October 20, 1950, until February 22, 1952, the evidence before the Board does not, in the opinion of the Board, satisfy the statutory requirement that “such use has continued until the date of the application to the Committee” as stipulated in clause (a) subsection 2 of Section 32b of *The Planning Act*, R.S.O. 1960, c. 296 as amended by Section 8 of *The Planning Amendment Act, 1961-62*.

“Since satisfaction of that requirement is a condition of jurisdiction under subsection 2 of Section 32b, the decision of this Board must therefore be to allow the appeal and to set aside the decision of the Committee of Adjustment.”

Appeal allowed: *Wilby, Hilton K., and the Committee of Adjustment of the City of Hamilton, re an application by Isabel Smith, O.M.B. R-158-69, 9th February, 1970.*

Chapter XXXVII

Lapse in Continuity of Use

Loss of Legal Non-conforming Use Status — Lapse in Continuity of Use 214

Non-Conforming Use — Evidence of Former Licences Granted 217

Loss of Legal Non-conforming Use Status — Lapse in Continuity of Use —

An appeal against the decision of the Committee dismissing an application for permission to use both floors of a two-storey factory type building either together or separately for the purposes of either Warehousing, class “A” (C.2) or a Motor Vehicle Repair Shop, Class “A” (C.1). The reason given was that it is impossible to utilize the property unless legal non-conforming uses as determined by prior Committee decisions are permitted on either floor of the building or throughout the entire building.

Evidence was to the effect that the property had been opened by the appellant in May, 1957, when it was already in a legal non-conforming use. At the day of passing of the original by-law the premises were used as a public garage. “On June 3, 1954, the Committee of Adjustment granted permission to use the premises for storage and warehouse purposes.”

“On January 23, 1957, the Committee permitted a change in the use to Motor Vehicles Repair Shop, Class “A”; this being the permitted use at the time of purchase by the appellant.”

“On May 21, 1958, the Committee permitted a change for the use of the upper floor to storage warehouse, Class “A”, and no further applications were made to the Committee prior to the present one which is the subject of this appeal.”

“Exhibit 2 is a copy of a lease dated May 1, 1960, between F. B. Bondy and Ring Radiators Limited for a term of three years and appears to include the entire premises; other evidence indicates however that it did not include the second floor. One condition of the lease is that the premises shall be used only for the *storage and reconditioning, repairing and cleaning radiators of automobiles and other like vehicles* and no other trade or business should be carried on or permitted to be carried on by the lessee. Two clauses of the agreement are:

“It Is Understood That the demised premises are zoned CI A1 for the purposes of a garage.

“And It Is Further Understood And Agreed that this Lease is conditional upon the Lessee obtaining the necessary permit to use the demised premises for this purpose.”

“Exhibit 4 is a copy of lease dated May 29, 1964, between F. B. Bondy and Mermaid Plastic Industries, for a term of three years for the second floor of the premises. This lease contains a clause that the premises are to be used for

cutting, trimming and storage of plastics and a further clause that the lease was conditional upon the lessee obtaining the necessary permit to use the premises for the purposes mentioned.”

“Apparently neither lessee did obtain a permit to operate the businesses as on January 7, 1965; each was convicted and fined for unlawful use of the premises. Both lessees vacated the premises in April, 1965.”

The appellant stated in evidence that he had not made any enquiries to determine whether lessees had applied for or received the necessary permits, and further claimed that he had made continuous efforts to secure new tenants. Exhibits were submitted in support of the latter statement. Other exhibits illustrated the interest of Citroen Canada Limited in renting the first floor provided the building could be used for *car storage*. A further exhibit showed that “. . . a Mr. Fred Bolton applied to the Metropolitan Licensing Commission to operate a *public garage (repairs)* in the building. The appellant alleged that both opportunities to lease the premises were lost due to inability to secure permits for the proposed uses. He also contended that loss of the legal non-conforming status would result in a loss in value of the premises of some \$45,000 to \$55,000 and evidence illustrates that he was assessed for business tax for the years 1965 and 1966.”

“According to the evidence of the appellant, it was not until he received a letter dated December 2, 1965, from the Commissioner of Buildings regarding the Fred Bolton application that he realized that he may have lost the legal non-conforming status of the subject property and this prompted him to make the present application to the Committee of Adjustment dated December 24, 1965.”

In part the finding of the Committee as considered by the Board was that “. . . the authorized use being interrupted by the use of the subject premises by a radiator repair company and a plastic factory; consequently, the Committee now finds itself without jurisdiction in this matter, and the application is refused.”

One area resident whose property abuts on the lane to the rear of the property opposed the application before the Board, stating that “during the last occupancy . . . a great deal of trouble had been experienced due to trucks blocking the lane, and damaged fences; also noise and odours from the plastic operations were offensive.”

“Counsel for the appellant argued that in respect to the use of the lower floor by Ring Radiators Limited the city was aware of the use and allowed it to run for five years before laying a charge. He contended that the use was in fact one that might well fall within the general classification of motor vehicles repair whereas the city had treated it as a service or repair shop use which includes servicing or repairing radiators. With regard to Mermaid Plastics, that firm was said to have conducted its business unmolested in the near vicinity previously. He admitted that the use of the building had been interrupted but through no fault of the owner. To support his argument he cited *Regina vs Nimak Investments Limited* 1965 Vol. 1, Ontario Reports, Page 96, *O’Sullivan Funeral Home Limited vs Corporation of the City of Sault Ste. Marie and Evans* 1961 Vol. 28, Dominion Law Reports, Second Series, Page 1, and others which are in turn cited in these two cases. He also referred to the commercial assessment which has continued since the premises became vacant.”

“Counsel requested that the Board should rule that there had been no interruption of use, in a legal sense, and that the Committee of Adjustment did have power to deal with the application and consequently the Board would have similar power . . .”.

“The Board was in some doubt whether the appellant was really seeking a variance from the present authorized uses or a confirmation of them. As mentioned earlier herein the authorized uses now are: — Lower floor — Motor Vehicle Repair Shop, Class “A”, Upper floor — Storage Warehouse, Class “A”. The present application is for permission to use both floors of the building, either together or separately, for either Warehousing, Class “A”, or Motor Vehicle Repair Shop. The Board finds the wording of the application to be somewhat ambiguous and might interpret it to mean that either floor separately or both floors together may be used for one or other of the purposes specified but does not mean that both purposes may be accommodated at the same time within the building. The inference has been however that the permission sought would allow either use on either floor or either one of the uses on both floors. Since permission for such uses would be an enlargement of the last authorized uses each of which was confined to a specific floor, the Board agrees that it is not a mere *confirmation of use* that is sought, *which the Board would not have the power to grant anyway*.

“While there may be argument whether the use last authorized by the Committee becomes the use on the day the by-law was passed, the Board does not find anything of importance turns on the point in this case since the

variances that have been granted do appear to have been for purposes similar to those in effect on the day the by-law was passed or more compatible with the uses permitted by the by-law.

“With regard to continuity of use of the premises the Board has given careful consideration to the evidence and argument on behalf of the appellant and if it were confronted only with the use of the lower floor as a radiator repair shop it would be loathe to rule that the infringement was so serious as to place the appellant beyond the jurisdiction of the Committee or the Board.

“The use made of the upper floor by Mermaid Plastics was however in the opinion of the Board a much more serious infringement. It was understood and agreed as a term of the lease that the premises were to be used for the ‘cutting, trimming and storage of plastics’ and the Board has concluded the storage was only incidental to the processing of the material. Even if storage of plastics were the sole use it is doubtful that it could have been carried on since the by-law permits only storage of any non-offensive, non-dangerous goods and the evidence of one witness was that there was an offensive odour from the material.” The Board decided that “. . . the authorized use of the premises has not been continued.”

Appeal dismissed and decision of Committee confirmed: *Bondy, Frederick B., and the Committee of Adjustment of the City of Toronto, O.M.B., P-1019-66, 3rd June, 1966.*

Non-conforming Use — Evidence of Former Licences Granted — An appeal by the original applicant against a decision of the Committee of Adjustment granting in part an application to permit the expansion of an existing non-conforming use to allow the operation of a garage for motor vehicles, but dismissing a part of the application which requested relief to allow the sale of new and used cars and motor repairs on the subject property.

“The appellant claims that this service station had been established in 1958 while the land remained in the township and since that time has continued to operate as a gasoline service station with two tenants until the month of August, 1967. The property is owned by British Petroleum of Canada Limited and on January 1, 1968, the appellant leased the service station intending to carry on the same use that had pertained in previous years. Following the annexation to the city in 1960 the land was zoned residential and the use on this property became legal non-conforming. There are a number of non-conforming uses in this predominantly residential area. He sought a licence to carry on this non-conforming use of an automobile service station together with permission to

sell new and used cars. A licence to sell new and used cars was refused. He requires the joint use in order to make his operation successful.”

“The evidence of the building inspector, who checks applications for licences and enforces the zoning regulations, was that in the year 1960 a licence to conduct an automobile service station had been granted to this property but no licence had been requested for the selling of new and used cars. The evidence of the planning commissioner was that this area was zoned residential and that the predominant use was residential with some non-conforming uses. It would appear that the licence to operate an automobile service station had been granted in 1960 and that section 2d (1) of the by-law permitted an automobile service station. In order to use this land for the sale of new and used cars it would require a public garage licence under section 2d (2) of the by-law and this he would not recommend in this predominantly residential area.”

“There seems to be more uncertainty as to the previous uses that were carried on under the automobile service station licence, it being claimed that cars had been sold on the premises.”

In making its decision, the Board considered the facts that the non-conforming use had ceased in August, 1967; that there had been only an automobile service station licence issued in the past, and that any extension to the uses permitted under the licence would not be in keeping with the intent of the by-law.

Appeal dismissed: *Levere, Dwight, and the Committee of Adjustment of the City of Hamilton, O.M.B. P-5079-67, 22nd, April, 1968.*

Chapter XXXVIII

Creation of Non-Conforming Use

Caretaker and Maintenance Staff — Essential Personnel — Erection of
Single Family Dwellings in Industrial Zone 220

Compassion — No Justification for Authorizing Contravention of By-law 221

Caretaker and Maintenance Staff — Essential Personnel — Erection of Single Family Dwellings in Industrial Zone — An appeal by the Minister against a decision of the Committee of Adjustment granting an application to permit the erection of two single family dwellings on lands zoned industrial. An earlier by-law placed the lands in a residential use zone but the current by-law passed in 1963 placed the lands in an industrial category and the official plan of the municipality also shows the land as industrial.

“In their decision the Committee referred to two points which apparently greatly influenced them at arriving at their decision. The first was that the restricted area by-law of the township does permit a dwelling in industrial zones to accommodate essential personnel and as the Committee is permitted to grant minor variances they reasoned that under the circumstances the application was for a minor variance and the development was appropriate. Secondly, they were of the opinion that they had the power to consider the extension of the existing residential zone into adjacent lands.

“Counsel for the appellant in his argument pointed out that the Committee had granted something more than a minor variance as they had allowed a use (or in other words added a permitted use) which was not permitted by the by-law, and secondly that the Committee had no jurisdiction to consider the extension of a use zone as this section” [Section 32b (2) (b), repealed 1966, ch. 116, s. 5 (1)] “has been deleted from *The Planning Act*.”

“The appropriate section of the township by-law is Section 81 which reads as follows:

“ ‘In any industrial zone or manufacturing commercial zone, any person may erect a dwelling in compliance with the requirements of an R4 zone for one caretaker or a person employed on the maintenance staff of an industrial or manufacturing zone commercial zone undertaking’.”

The Board decided that the wording of section 81 of the by-law “. . . seems to limit the use of a dwelling which is permitted by this section to ‘one caretaker or a person employed . . .’.” Counsel for the applicant argued that the by-law permitted the erection of two dwellings and that “. . . the occupancy of the dwelling or dwellings throughout their lifetime would be a matter for the building commissioner to check to ensure the occupant was a ‘caretaker or person employed’ as the section requires.”

The Board stated “I do not believe that this interpretation can reasonably be put on the wording of the by-law . . .”

Appeal allowed: *Minister of Municipal Affairs and the Committee of Adjustment of the Township of Toronto, O.M.B. P-2845-66, 22nd February, 1967.*

Compassion — No Justification for Authorizing Contravention of By-law —

An appeal by the Minister of Municipal Affairs against a decision of the Committee granting upon conditions an application for permission to allow the applicant to sell repossessed cars from his residential property which is zoned R1.

The applicant "was disabled in an industrial accident several years ago. He has a wife and six children and draws a pension of only \$156 per month. Despite his handicap he wants to earn his living and has avoided accepting welfare. Apparently, the council suggested that he should apply to the Committee of Adjustment for a variance from the provisions of the zoning by-law. Following notice of the application no objection was taken by anyone. The Committee thereupon granted the application subject to certain conditions, viz:

"1. No major repair work to be done on the premises.

2. Only repossessed cars to be sold, not more than six vehicles on the premises at one time.

3. If the property is sold or Mr. Mantini is no longer resident on the property this minor variance granted would no longer be in effect and the use of the property would revert to the original intent of the by-law on rezoning for R.1.

4. No signs or identifying markers to be erected without application to, and approval of, the council."

Counsel for the applicant stated: "that it was difficult for him to defend the Committee's decision and did not attempt to do so on legal grounds. He was of the opinion that both the council and the Committee had been moved by a spirit of compassion for the applicant; the Committee being further encouraged by the lack of opposition from the neighbours. The Committee had also imposed the several restrictive conditions in order to minimize the effect of the proposed use.

"Counsel for the Minister contended that the Committee had undoubtedly exceeded its jurisdiction in that the relief sought by the applicant could not be dealt with as a minor variance. He too sympathized with the applicant but had

to point out that compassion could not be justification for a contravention of the by-law.”

The Board stated: “While I have no criticism of the motive which apparently influenced the Committee to reach its decision I must find that the variance sought was not a minor variance and therefore the Committee did not have the power to grant it.”

Appeal allowed: *Minister of Municipal Affairs and the Committee of Adjustment of the Township of Niagara, re an application by Americo Mantini, O.M.B. P-4075-67, 19th January, 1968.*

Chapter XXXIX

Extension of Non-Conforming Use

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Extension of Non-Conforming Use — Subject to Condition — An appeal by the original applicant against a decision of the Committee granting upon conditions an application for permission to enlarge or extend a building which has been used for a non-conforming purpose ever since the city zoning by-law became effective.

“At the commencement of the hearing counsel for the appellant stated that he and counsel for the city were agreed that the only point at issue was the condition number 1 which was:

- 1) that portion of the property shown on the plot plan as 68 feet on Pitt Street and 51 feet on Division Road, which is encroached on by the present city pavement, shall be deeded to the City for the nominal sum of one dollar.

“At the north-easterly corner of Lot 10 traffic had for many years encroached into the lot and had in effect ‘rounded’ the corner. Eventually the road as travelled was paved although no curbs were established. No one appears to know when the encroachment commenced or when paving took place but it was not contended that either had taken place since annexation . . . the encroachment extends from a point on Cornwall Centre Road 51 feet westerly from the corner of Pitt Street to a point on Pitt Street 68 feet southerly from Cornwall Centre Road . . . the encroachment does not follow a straight line joining the two points mentioned but is along a curve, the radius or the external distance of which is not shown.

“The issue is whether the appellant should be compelled to dedicate the area of the encroachment to the city for only a nominal sum or whether he should be free to negotiate a sale of the property to the city. Evidently he is not unwilling to part with the area if the price is satisfactory.

“Counsel for the appellant argued that it was improper to apply condition 1 to an application such as this one which concerned only the extensions to the building existing on the property owned by his client and did not affect the land itself and, if the city wants the land it has other means of acquiring it.

“Counsel for the city argued that Pitt Street is a busy access road to the city from the outlying area to the north and that the rounded corner is necessary for the convenience and safety of traffic. Mr. Goulet had purchased the property recently and must have been fully aware of the situation when he did so. He pointed out that a 13 foot strip across Lot 1, Registered Plan 116 and some considerable distance west thereof had been reserved for road widening but none had been taken from the corner lot. It might have been a greater dis-

advantage to the property if the Committee had required dedication of that strip. It was his opinion that the Committee had acted quite within its powers when it imposed the subject condition.

“Despite argument to the contrary by counsel for the appellant, it is my opinion that subsection 9 of Section 32b does empower the Committee of Adjustment to impose conditions when granting the permission sought in the subject application.

“As mentioned earlier herein there does not seem to be any knowledge of the time at which the encroachment commenced or the pavement was constructed but apparently both took place prior to annexation. No evidence was adduced or argument made that the present owner or any previous owner had ever protested the encroachment. It may be that the municipality could claim ownership of the area encroached upon through usage but this would have to be determined elsewhere.

“Having regard for all the circumstances it is my opinion that the Committee of Adjustment has acted within the powers conferred upon it and that condition 1 is not unreasonable.”

Appeal dismissed: *Goulet, Lucien, and the Committee of Adjustment of the City of Cornwall, O.M.B. R-1133-69, 7 May, 1970.*

Extension of Dairy — Non-Conforming Use — An appeal against the refusal of the Committee of an application to permit an addition having a depth of 11'8" to 12'0" to the front of a dairy. Distance from the front of the existing building to curb was 18'.

The decision of the Committee stated in part “. . . be not approved because it will be out of line with the other buildings on the street and also building to the lot line is not permissible in this area.”

“After the date on which the application was heard by the Committee, a survey of the property was made by an Ontario Land Surveyor. This shows the distance from the front of the existing building to the front lot line to be 11'0". At the hearing before the Board it was stated that the owners' intention was to erect an addition which would extend to within “a few inches” of the front lot line.”

The property is a non-conforming use in an R3 residential zone. Required front yard under R3 regulation is 20.4 feet. Existing front yards, in the same block, on the same side of the street vary from a minimum of 19'7" to a maximum of 33'0".

Owners of several nearby properties appeared and supported the proposal of the dairy on the grounds that the addition would improve the appearance of the neighbourhood.

The Board decided that "this was an application for an extension of a non-conforming use. . . . The granting of the application would have allowed the building of an addition which would have almost completely filled the front yard now existing. While such an addition might be reasonable in another position on the site it would not appear to be reasonable in the front yard in a residential district where the nearby buildings have observed a front yard which exceeds the minimum yard required by the by-law."

Appeal dismissed: *Sudbury P. & C. Co-operative Dairy Limited and the Committee of Adjustment for the City of Sudbury, O.M.B. N-9668-65, 21st December, 1965.*

Extension of Variety Store — Stockroom and Washroom Addition — Non-Conforming Use — Powers of Committee — An appeal by the original applicant against the decision of the Committee dismissing an application for a minor variance to permit the addition of a stockroom to a variety store which would reduce the westerly side yard to 6 inches.

The building is located in a single family district and its present use is legal non-conforming.

"The appellant testified that there was a pressing need for this addition to store his stock and to provide washrooms for his customers."

Evidence of the city planning director indicated that the subject site violates the zoning due to lack of sideyards and parking requirements. He also stated that the official plan designates the thoroughfare on which the building is located as an arterial street with a future width of 86 feet as compared to its present 66 feet.

The Board stated "The legislation governing applications of this kind is permissive. It is quite clear that the powers given to the Committee of Adjustment by statute are conferred solely for the purpose of allowing it to *regulate*

and extend non-conformity only to the extent that it is in keeping with the overall planning concept of the municipality.

“A consideration of the evidence therefore, leads me to the conclusion that not only does this application violate the intent and purpose of the official plan but it would also fail as being a minor variance.”

Appeal dismissed: *Pacifico, Tony, and the Committee of Adjustment of the City of Sarnia, O.M.B. P-2153-66, 14th February, 1967.*

Extension — Fabrication Plant — Non-Conforming Use — An appeal by the original applicant against the decision of the Committee dismissing an application for an extension to a legal non-conforming use.

“The evidence indicated that for many years this property was used for a wood fabricating business for the manufacture of building trusses or laminated wood beams. In the year 1957 the appellant, who is the present owner, purchased the property and began the operation of a steel fabricating business which manufactures heavy items for a number of industries in the City of Hamilton. The present building houses a paint shop and trouble has been experienced with fumes from this operation getting into the office and other areas of the building. This was given as the reason for wishing to remove the paint shop from its present position and to house it in new space which would be attached to the existing building. In addition to the problem with fumes the evidence showed that the Provincial Department of Labour had requested that this change be made because of inadequate facilities. The sketch filed as Exhibit 9 shows the location of the proposed addition and an existing crane would be relocated and would run through the paint shop and into the open land at the rear as it does at present, so that finished items might be loaded on vehicles for delivery. From the evidence it is clear that this company is operating as a *lawfully established non-conforming* use and was there for some years before the passing of the first restricted area by-law in this municipality.”

“The zoning of this area is a rural residential category. The granting of this appeal was vigorously opposed by a number of residents in the area and it was supported by some owners of nearby property. The basis of the objection was to noise, the nuisance allegedly caused by light from welding operations and late hours of operation. There was no effort on the part of the appellant to disagree with this objection. They stated quite frankly that this was a heavy industrial operation and that these effects could be expected in any industry

of this type. The evidence also showed that from commencing operations in this location in 1957 the type of operations had not changed and that the proposed addition would not change the nature of the operation nor the volume of the work done."

"The objection to the granting of this appeal relates entirely to nuisances which nearby residents allege are caused by the operation of this company. The evidence in my opinion shows that if the addition were built there would be no change in the volume of work or the type of manufacturing that is carried on. For this reason, in my opinion it would be unreasonable to refuse the appeal and I recommend that it be granted."

Appeal granted: *Wilson Engineering and Fabricating Limited and the Committee of Adjustment of the Township of Saltfleet, O.M.B. P-3492-67, 12th July, 1967.*

Garage Addition — Trucking Business — Objection To Former Business of Applicant — Not Validly Related — An appeal by a person who was an objector at the original hearing against the decision of the Committee granting an application upon a condition.

"The applicant's desire is to erect an *addition to the garage* used in conjunction with his trucking business which has operated at that location for many years. The stated purpose is to permit the housing of trailers for electrical repair in cold weather which is expected to lessen the incidence of outside storage.

Although in a residentially zoned area, no residence exists in the area and the property adjoins a disposal plant."

"Of two objectors only one resided at all nearby and he at a distance of some 700 feet. This objector's principal complaint relates to the dust and noise emanating from a ready mix plant nearby in which the applicant formerly had, but no longer has, an interest and which could not be validly related to this application."

"At the Committee hearing counsel for the appellant had suggested certain conditions for approval and it was evident that the Committee had endeavoured to include these conditions in its decision. Acting in good faith the applicant then commenced building operations but ceased upon being advised of the appeal." The Board decided that the conditions had been substantially complied with.

Appeal dismissed: *Orr, Sidney, and the Committee of Adjustment of the Town of Georgetown, O.M.B. P-81-65, 31st December, 1965.*

Lumber and Building Supplies — Non-Conforming Use — Addition of Concrete Mixing Plant — An appeal by the original applicant against the decision of the Committee dismissing an application for an extension to a non-conforming use. The subject lands are in a restricted industrial zone.

“The evidence showed that beginning some time before these lands were regulated by a restricted area by-law, and continuing up to about 8 to 10 months ago, this land was occupied by the Clark Building Supply Company, who dealt in building supplies and lumber. This was a non-conforming use of the lands in question. This company has not operated for the last 8 to 10 months on these lands. The appellant plans to acquire this property and to add to a building which exists on the property. . . . The existing building is a single storey and a second storey would be added, which would double the floor space. The lower storey would be used for the storage of heavier items and the second storey would be used for lighter items such as insulating materials, and for offices. At the north end of the building a concrete mixing plant is proposed. This would be used for the storage and distribution of aggregate, cement and water, which would be delivered into ready-mix concrete trucks, which would then take this material to the various customers. The evidence showed that this would be a fairly intensive activity. The aggregate would be brought to the plant in trucks, as would be the cement, and the evidence showed that this was expected to be a continuous activity, as would be the hauling of the batches of concrete from the plant to the various construction projects. The appellant maintains that this is an ‘extension to a non-conforming use’.”

The appellant also gave evidence as to the type of addition that would be built, the machinery required and the landscaping and screening that would be installed.

The appeal was opposed by counsel for owners of nearby properties; by the chairman of the Guelph Board of Park Management and by a person who operates a poultry establishment on the next property to the north who indicated “. . . that it was his experience that any noisy activity adversely affected the production of eggs . . .”. The Committee in refusing the application stated that the relief requested would be a major enlargement; that the cement plant could be obnoxious; that the by-law specifically prohibited both uses and that it was not the intent and purpose of the by-law that this type of operation should be continued at this main intersection.

The Board decided that “. . . the proposed concrete plant cannot come within the wording ‘in the same manner and for the same purpose as it was used on the day the by-law was passed’. There was no evidence to show that either of these activities had been carried on at any time in the past.”

Appeal denied: *Hogg Fuel and Supply Limited and the Committee of Adjustment of the City of Guelph, O.M.B. P-2960-66, 29th March, 1967.*

Chapter XL

Change in Non-Conforming Use

Change of Non-Conforming Use to less Obnoxious Use 232

Conversion of Lounge into Extra Suite — Apartment Building 232

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Change of Non-conforming Use to Less Obnoxious Use — An appeal against the decision of the Committee permitting “the owner The Canadian National Railways through their tenant Saya Quality Fuels Limited to change the land use of the non-conforming property, from a coal and wood yard classification to a sales and storage of oil fired equipment, gas fired equipment, electrical heating equipment and parts and accessories classification.”

“The Committee was of the opinion that the *new business would be less obnoxious than the old* to the surrounding residences and on this basis granted permission for the change.”

After hearing the evidence the Board concurred in the conclusion reached by the Committee.

The Board commented further that “the underlying purpose of the subsection of *The Planning Act* under which this adjustment was granted is *that non-conforming uses will eventually wither away . . .*”.

“Having viewed the buildings on this property, it would appear to me that apart from the sales office the buildings are at least past middle age and if any further change of use is ever sought, serious consideration should be given at that time as to whether there was any justification for further extending any non-conforming use on this property.

“As well as complaining about the general undesirability of this business in what is quite a pleasant residential area, a specific complaint was made against transport trucks going north-west on Copeland Street and then having to make an acute angled turn into this property. This necessitates these trucks having to back up much to the annoyance of the neighbours on the opposite side of the street. It would seem questionable if an effective condition could be attached to the Committee’s decision which would prevent this, but it should not be impossible for the tenant of the premises to insist that all transport trucks should enter from the opposite direction, and its failure to do so could also be an element that could be taken into consideration if permission were ever sought for any further change in use.”

Appeal dismissed: *Ellis, Edna, and others and the Committee of Adjustment of the City of North Bay, O.M.B. N-9579-65, 20th December, 1965.*

Conversion of Lounge Into Extra Suite — Apartment Building — An appeal by the owner of an apartment building for a variance which would permit 90 apartment suites in a building where the by-law requirement is for a total of 89 suites.

“By-law 1963-67 of the Town . . . was passed to permit the erection of 225 apartment suites as a complex on the subject property composed of three buildings. Two of the buildings were to contain 68 suites and the building in question to contain 89 suites.”

Evidence indicated that the original developer of the property, Atlas Plastics, got into financial difficulties and that the present owner took over the property by way of a mortgage.

“Exhibit 1 filed at the hearing indicates than on January 7, 1966, the then owner, Atlas Plastics, applied to the Town . . . for a building permit to convert the lounge on the main floor into an additional apartment.”

At the time the application was made verbal assurance was given to the chief building inspector “. . . that if the application were granted two suites on the fifth floor would be converted into one in order . . .” to comply with the total requirement of 89 suites. The chief building inspector visited the premises and noted that a doorway had been cut through to link the two suites.

“It now appears, however, that the original owner sometime later converted the fifth floor back to two separate suites so that when Mr. Ridout took over the building there were actually 90 suites in the building.

“The appellant contends that this should be looked upon as a minor variance and that in any event a building permit was issued by the town with no conditions contained on it.

“The Town . . . on the other hand contends that it is not a minor variance and that it is not their normal procedure to print conditions on a building permit which are arrived at in agreement with a builder.”

The Board decided that “. . . the approval of this application would not carry out the original intent and purpose of the by-law. The by-law in the first instance was enacted to permit a specific number of suites and that any variance from this number should be in the form of a legislative change passed by the council of the municipality.”

Appeal dismissed: Ridout, Arthur Ernest, and the Committee of Adjustment of the Town of Oakville, O.M.B. P-2718-66, 9th March, 1967.

Sorority Accommodating University Girls — Replacement of Unheated Porch with Study Room — Objection To Present Use — An appeal by neighbouring property owners against the decision of the Committee of Adjustment, granting upon a condition, an application by the Kappa Alpha Theta Sorority authorizing the replacement of “. . . an enclosed unheated porch which is presently in a state of disrepair with an addition to be used as a study room to improve the facilities of the sorority. The net effect would be to extend the addition a further seven feet, three inches . . . to the east.”

“The zoning in effect on the subject site is single family residential and this applies to most of the lands in the area except to the east which is zoned for two family dwelling. The actual line of demarcation of the two zones is the easterly boundary of the lands owned by the appellant, . . . The evidence would indicate that there are very expensive single family residences in the area, and Exhibit 1, filed, indicates the substantial home of the appellant.

“The subject property which is situate at the northeast corner of the intersection of Cheapside and St. George Streets is a non-conforming use in that it is used as a sorority accommodating university girls during the university term and being rented out to roomers during the summer months.

“At the hearing there appeared two objectors being the immediate neighbours to the east and to the north. They really were objecting to the present use but felt that if approval to this application was granted the non-conforming nature of the use would be perpetuated and there would be a greater reduction in the residential amenities if the facilities were increased as proposed. They objected to the lack of exterior maintenance of the grounds of the sorority as well as the noise associated with the activities of the sorority house particularly and in the evenings and weekends when some of the social activities were being carried on on the premises.”

On behalf of the applicant it was stated that the sorority house in this location will not wither away because the economics of the situation will remain. It was suggested that the proximity of the demarcation line of the zoning and the existence of some non-conforming uses indicate that this is a transitional area.

The Board decided: “Upon all of the evidence submitted and argument made I am of the opinion that the appeal should be dismissed. . . . The objections really are indications that they do not like the present activity that is being carried on, on the premises and I am not satisfied that this extension will increase such use by the sorority which would be detrimental to the surrounding

uses. If anything the repairs should improve the exterior appearance of the dwelling.”

Appeal dismissed: *McNee, Cecilia, and the Committee of Adjustment of the City of London, O.M.B. P-1112-66, 24th June, 1966.*

Storage of Furniture in Vacant Building Formerly Used as a Bottling Plant — Non-Conforming Use — Evidence of Fire Hazard — An appeal from the decision of the Committee dismissing an application for a variance to permit a vacant building to be used for the purpose of furniture storage in an area designated by the by-law as residential.

The property had been used for some years as a soft drink bottling plant by the appellant until the business, but not the property, was sold to Sarnia Beverages. Certain equipment was left on the premises even after the purchaser moved to other quarters.

“The appellants had and still have certain items stored in the building at the time of vacancy, and rely upon this for its status of continuing use although no actual bottling was done” after the sale.

“The appeal is opposed by the City of Sarnia and certain ratepayers resident in the area, all of whom take the position that the granting of the appeal would not be in the best interests of the affected ratepayers or the municipal planning concept as a whole and indeed request the Board to make a finding on the evidence that the Committee, and therefore the Board, lacks the jurisdiction to entertain the matter.”

“After a careful review of the evidence, which I have previously commented on, one must arrive at the conclusion that those in opposition have not fully established that all facets of the business ceased to function with the cessation of the bottling works operation. The matter will therefore be decided on the merits.”

“Shortly after Sarnia Beverage vacated the premises, the appellants leased part of the building . . . for storage of furniture with no recourse to the Committee of Adjustment, and purely on the premise that since certain items of personal furniture were stored there at one time, and other advertising matter as well, no other justification for the action was required. There is no evidence that satisfies me that such a storage use as is here contemplated had indeed been legally established before or after the vacancy. The business was in essence a bottling and distribution plant with a particular type of storage incidental thereto.

Ratepayers are vociferous in their opposition to the continuity of any business on the premises, and complain of the noise of trucks, the traffic resulting, and its effect on the single family residential amenities. There are 3 small stores in the area, but essentially its character is residential. Evidence was submitted by the Planning Director that “ a furniture warehouse is not a compatible use as the city does not permit light or any industrial use in the residential area.”

“It was the evidence of the Building Inspector for the city that the municipality has adopted the national building code and that this mainly frame building, if used as a furniture warehouse, would qualify in group F, division 2 and comes under loft and warehouse buildings containing largely combustible stores. Restrictions regarding warehousing vary according to floor area and the use of the subject building for this purpose would call for wall construction of not less than $\frac{3}{4}$ hour fire-rating. The subject frame building could not contain a fire for that period of time and its rating would be less than 20 minutes. As building inspector, he would oppose this use on the subject site.

“The fire chief, after an examination of the property, stated in his testimony that the bottling equipment contained within the structure when that business was in operation, would be considered as non-combustible material. Furniture, he states, cannot be considered in this category and a fire in this building would be much harder to arrest if it contained materials such as furniture.”

The appellants based their case upon section 32b (2) (ii) of *The Planning Act*, which permits a change in use provided that such use is more compatible with the uses permitted by the by-law.

The Board decided that “the use proposed by the appellants . . . is not more compatible than the former operation.”

Appeal dismissed: *Morris, Leslie, and Kathryn Morris and the Committee of Adjustment of the City of Sarnia, O.M.B. N-9920-65, 6 May, 1966.*

Tenant — Use of Property by — For Auto Repairs — Reversion to Previous Non-Conforming Use — Auto Body Repair — An appeal against the decision of the Committee refusing an application for permission to change the use of the subject premises from auto repairs to auto body repairs.

“The subject land was acquired by the present owner in March 1962 at which time the tenant was using the premises for *auto repair*. Some time prior to this the use had been *auto body repairs*. Apparently at the suggestion of city authorities an application was made to the Committee of Adjustment for permission to change the use to *auto repairs* and this was granted as being more compatible with the uses permitted by the by-law which are *residential*. It is now desired to *revert to the previous use of auto body repair*.” The opinion of the city fire prevention officer was that the proposed use “would be less hazardous than auto repairs and that *no painting would be permitted*.”

The Board concurred with the decision of the Committee that “the proposed use was less compatible with the uses permitted by the by-law . . .”.

Appeal dismissed: *Barron, Patricia, and the Committee of Adjustment of the City of Brantford, N-8911-65, 27th May, 1965.*

Chapter XLI

Rebuilding of Non-Conforming Use

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Demolition of Residence — Replacement by Retail Store — Carry Out
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Demolition and Rebuilding — Service Station — Legal non-conforming use — An appeal by objectors against a decision of the Committee granting an application to demolish an existing service station and to construct a new service station across parts of the present premises as well as lands to the south.

“The existing service station is located in a commercial zone not permitting service stations and is a legal non-conforming use. The lands involved to the south also prohibit service stations.

“If this is an application to extend an existing non-conforming use building pursuant to section 32(b) (2) (a) of *The Planning Act*, then this application should fail since the application is not for the purpose of an extension. In any event it should fail because even if it could be argued that it is an extension, the extension proposed is beyond the lot limits of the land owned and used at the date of the passing of the by-law.

“If as counsel for the applicant argued the application should be considered as a minor variance under section 32(b) (1), then in addition to the very substantial variances required, respecting frontage, lot area and building set backs, to permit an automobile service station in a zone prohibiting such use would in my opinion be fatal to the argument of a minor variance.”

Appeal allowed: *Application to Committee dismissed: Hejazi, Fatme, and others and the Committee of Adjustment of the City of Windsor, re an application by Texaco Canada Limited, O.M.B. P-8638-69, 23rd July, 1969.*

Demolition of Residence — Replacement by Retail Store — Carry Out Do-Nut Store — An appeal by an objector and the City of London Planning Board against the decision of the Committee granting an application to permit the demolition of a residence for replacement by a retail store the premises of which would be used as a carry out do-nut store, with approximately 15 stools therein. “The subject lot is located on Oxford Street immediately west of a parcel of land zoned and used for general business on the northwest corner of Oxford Street and Wharncliffe Road. Both these streets are arterial roads. The east 24.5 feet of the lot is within a two-family zone.

“The Planning Director in his evidence stated that if this were a zoning application there would be non-conformity with the official plan because that portion of the lot now zoned for two-family purposes is not contained in the northwest quadrant of the intersection designated by the official plan as com-

mercial. In addition the nine off-street parking spaces proposed would not be adequate in his opinion. In the view of this witness, this type of application should properly come before council in the form of an application to amend the zoning by-law with a site plan attached. It would thus be possible to obtain recommendations from the various members of the technical staff and in addition give consideration to the best manner by which the interests of the single-family and two family homes in the area would be protected.

“If the application as made to the Committee of Adjustment is to succeed, it is quite apparent that it must be shown that what is involved is a minor variance. The Committee of Adjustment granted the application without conditions, and in my opinion the appeal from that decision should be allowed.

“The various factors raised by the planning director are of such proportion and ought to be given such study that in my view Section 32b of *The Planning Act* did not contemplate this kind of a change under the heading of a minor variance.”

Appeal allowed: *Majerle, Thomas J., and the City of London Planning Board and the Committee of Adjustment of the City of London, O.M.B. P-3864-67, 20th November, 1967.*

PART VI

CONDITIONS

Chapter XLII

Special Considerations — Conditions

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Condition that does not have to be fulfilled — No condition at all — An appeal by the municipality against a decision of the Committee granting an application for approval of the conveyance of a parcel of land “subject to the condition that the applicant convey to the town a strip of land along the frontage for the widening of Wood Lane ‘if Mr. Lepper feels it is desirable’,”

“Counsel for the appellant submits that a condition which does not have to be fulfilled is no condition at all and that consent to convey should not be given without dedication for road widening because of the narrowness of Wood Lane at this point. The width of the road allowance is approximately 39 feet at the northerly limit of the subject parcel and about 48 feet at the southerly limit. Future road plans for this municipality contemplate the widening of Wood Lane to at least 66 feet and possibly to an 86-foot right-of-way. Part of the lands needed for widening to 66 feet has already been acquired.

“It has been the policy of council to ask for dedication of land for widening in every case where there is an application for consent to convey and the proposed lot fronts on a street allowance having a width less than 66 feet, and in such cases a condition to that effect has been imposed.

“I agree with the position taken by the municipality. Consent to create a building lot fronting on a street as narrow as Wood Lane should not be given without provision for widening to the width of a normal street allowance at least. The town here is not seeking dedication of land for widening to 86 feet but only to 66 feet. The dedication sought would reduce the area of the parcel to be conveyed to 6,688 square feet. A lot of that size would be similar to other lots in the neighbourhood and its area would exceed the by-law’s requirement of 5,000 square feet for lot area in this one-family detached dwelling zone.

“For these reasons I recommend that the decision of the Committee be varied by deleting the condition contained therein and substituting therefor the condition that the applicant convey to the Town of Richmond Hill a parcel of land across the frontage of the proposed lot on Wood Lane to a depth of 27 feet at the northerly limit reducing to a depth of 18.22 feet at the southerly limit of the proposed lot from the easterly limit of Wood Lane as shown on Exhibit 2.”

Committee decision varied: *Richmond Hill, Town of, and the Committee of Adjustment of the Town of Richmond Hill, re an application by James G. Lepper and J. Ruth Lepper, O.M.B. P-7551-68, 14th February, 1969.*

Chapter XLIII

Five Per Cent Cash in Lieu of Land

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Five Per Cent Cash Payment In Lieu of Land — Condition to Consent —

An appeal by the original applicant against a decision of the Committee granting a consent to a conveyance subject to four conditions.

“It is against one of these conditions which this appeal is lodged, more specifically the fourth condition which reads as follows:

4. That a cash payment in lieu of a 5 % land dedication for public purposes from those lands being conveyed shall be made to the Corporation of the City of Hamilton.”

“Counsel for the appellant contends that because of the permissive wording of section 32b (9a) where the word ‘may’ is used in applying conditions it should not be applied indiscriminately to all consents and that in this particular case it creates an unjust situation.

“Surely it cannot be argued that it is the function of this Board to instruct Committees of Adjustment how they should draw up their rules of procedure within the framework of the legislation provided.”

Appeal dismissed: *Jess, Truman Robert, and the Committee of Adjustment of the City of Hamilton, O.M.B. P-3483-67, 8th August, 1967.*

Five Per Cent Dedication — Past Development — Retroactive Legislation

— An appeal by the original applicant against a decision of the Committee granting applications respecting the conveyance of two parcels of land subject to a condition that “there be paid the sum of 5 % of the current market value of the land . . . in lieu of parkland dedication which sum amounts to \$275.”

“The area is substantially undeveloped except for scattered single family residential development on the north side of Riverside Drive to the east of the property, such development occurring on relatively large lots fronting on Riverside Drive. On the south side there is a plan of subdivision which was commenced in 1959, the development of which is proceeding easterly.”

“The subject parcel which comprises about 10 acres has upon it *two single family residences* on the two westerly lots each of which will be severed from the larger parcel in these applications. The larger parcel comprising approximately 8 acres is unimproved by buildings. The evidence would indicate that the residences were constructed by the two Davis brothers in the years 1920 and 1930 and upon the land there was carried on by them a florist business.

In 1965 this business was terminated and recently one of the brothers died. By this application it is intended to accomplish the registration of the conveyance of each of the two parcels with the houses from the balance of the unimproved land."

"The solicitor for the appellants submits that it is improper to impose such a condition because the appellants are now asking for *recognition of past development and not future development*. The development occurred long before the area of subdivision of control by-law was enacted and it is submitted that what is before the Committee is not an issue with respect to the development of the 8 acres of unimproved land."

"The city submits that if this land was being developed as a plan of subdivision these two parcels would be included and that a 5% park dedication would be automatically applicable to the acreage which comprise the parcels at 1179 and 1185 Riverside Drive. It is argued that when all of the land is in the same ownership the 5% park dedication should equally apply to a land severance."

The Board decided: "I am of the opinion that the condition should not be imposed in the present circumstances. The *effect of the imposition of such a condition is to make retroactive the legislation*. The purpose of providing parkland is for the use of the people of the area who will need parkland facilities as future development occurs. Obviously, in this instance the creation of the two lots separated from the remaining land is not going to increase the number of people using the property, and therefore no resulting additional requirement for parkland facilities. The third parcel cannot be developed as such because it is in a holding category under the zoning by-law and will require the permission of the municipality before development can occur. No doubt, an acreage of this size will require a plan of subdivision, but in any event any development that occurs thereon will require the approval of the municipality and be subject to the requirement of parkland dedication or money in lieu thereof."

Appeals allowed *Davis, Eli, and Verna D. Davis, Executrix of the Estate of Walter John Davis and the Committee of Adjustment of the City of London, O.M.B. P-5856-68, and P-5859-68, 7th June, 1968.*

Mandatory Cash Payment — Conditions — Cash payments instead of actual land dedication — An appeal by the original applicant against conditions imposed by the Committee in granting an application for the severance of a parcel of land. The conditions were stated as follows:

“(a) the owner deeds to the city a 10-foot strip along the 172-foot frontage for future road widening.

(b) that a capital contribution of \$150.00 be paid to the City of Barrie at the time of conveyance.

(c) that cash to the value of 5% of the land in the new lot created be paid to the City of Barrie for public purposes other than highways as provided in Section 32b (2a) of *The Planning Act*.

“The subject land is located in a good quality single-family residential area and zoned R1 restricting it to such uses. It has a total frontage of approximately 172 feet on Ann Street and at the present time there is one brick bungalow situated on the property. It is proposed to divide this parcel of land approximately in half to create one additional residential lot. Both properties would comply in all respects with the existing zoning by-law and the Committee in granting the conveyance imposed the conditions as previously stated. It should also be noted that these conditions are similar to others imposed by the Committee in granting conveyances of this nature.

“Dealing firstly with the requirement of a 10-foot widening strip, the municipality indicated that Ann Street is designated as a connecting link to King’s Highway No. 27 and a right-of-way width of 86 feet is required for future road reconstruction and widening. At the present time, Ann Street has a 66-foot right-of-way and it is proposed that the future road width be obtained by a 10-foot widening strip on each side. The condition imposed would implement these future plans. Under the circumstances, I believe that this condition is reasonable and would therefore recommend no change.

“In regard to the capital contribution of \$150.00, it was submitted by the City that this sum of money is intended to defray such expenses as over-size sewers, street-lighting and other special development costs. It was further revealed that the actual cost to provide for these expenses far exceeded the \$150.00 figure but it is the usual practice to adopt a fixed sum price. *Counsel for the appellant argued that a developer operating under a sub-division agreement only pays a capital contribution of \$100.00 per lot and in any event, the Committee changed the amount of this sum from \$100.00 to \$150.00 between the time the application was made and a decision on this matter was rendered.*

“It is not possible to compare the capital contribution as a condition imposed by the Committee of Adjustment with a capital contribution to be paid by the Developer under a subdivision agreement. This is only one isolated item of a subdivision agreement which would include many other requirements by the

Developer and could only be considered in the light of the over-all agreement. There is also no dispute that the sum of \$150.00 was less than necessary to meet the expenses referred to and I see no reason why the Committee could not adopt this sum at any time until the decision was issued. In the result, no change is recommended in this condition.

“The final condition, regarding a cash payment to the value of 5% of the land presents a more difficult problem to resolve. The only evidence as to market value of the land was submitted by the owner and the price stated was \$7,400.00. This would result in a cash payment of \$370.00 calculated at a rate of 5%. However, the city has set a standard rate of 10¢ per square foot in arriving at the land value and this method has been used in calculating previous payments of a similar nature. This would result, in the present case only of a payment of approximately \$40.00. During the course of the hearing, counsel for the appellant agreed to the payment of the lesser sum based on the 10¢ per foot calculation. In view of the fact that this arbitrary rate for calculating land value has been used on other similar applications and also there is agreement to this figure, I am prepared to recommend that it be accepted.

“*Counsel for the appellant also argued that the power conferred on a Committee of Adjustment by sub-section 8 of Section 28 of The Planning Act only provides for the authorization of a cash payment instead of actual land dedication but does not allow the Committee of Adjustment to impose a mandatory cash payment.* I cannot accept this view. The Minister has broad powers to impose conditions to the approval of a plan of subdivision some of which are conferred on a Committee of Adjustment in severance applications. It would be unreasonable to suggest that a cash payment instead of actual land dedication could not be imposed where the situation so warrants.”

Appeal dismissed and conditions upheld: *Detwiler, John R., and the Committee of Adjustment of the City of Barrie, O.M.B. R-109-69, 4th day of February, 1970.*

Mortgage Purposes, Consent For — Cash Payment in lieu of 5% of Land — An appeal by the original applicant against one of the conditions imposed by the Committee in granting an application for consent for mortgage purposes.

“This is an appeal by G. J. Simpson Construction Company Limited which shall be referred to as the Company, against a decision of the Committee of

Adjustment of the City of Ottawa dated the 4th day of May, 1970, and a cross-appeal by the Ottawa Planning Board against the same decision.

"The appeal of Mr. Citron's client is against a condition imposed by the Committee of Adjustment in its decision, which is as follows:

"1. that the applicant pay the City of Ottawa cash in lieu of lands for public purposes to the extent of the value of 5% of the parcel being severed."

"The appeal of the Ottawa Planning Board, however, is that the condition does not go far enough and that the 5% *be applied against the value of all of the lands and not just against the northerly parcel which is being severed.*

"The Company acquired a parcel of land on Carson's Road in the City of Ottawa and proceeded to erect some 29 town houses on the site. At a later date a smaller parcel was acquired to the north on which it was proposed to erect two additional buildings. These two parcels were contiguous and were in the same ownership and, therefore, became one lot.

"Subsequently, an application was made to the Committee of Adjustment to sever the northern parcel for mortgage purposes. The Committee dealt with this application and granted the same with the attached condition that has been previously stated.

"*Counsel for the appellant argued that this is not a severance in the true sense of the word because it is for mortgage purposes only.* He argued that his client had already faced considerable expense in developing this property, such as the dedication of frontage for road widening purposes and other charges required under the pertinent by-law for the development of multiple housing in the City of Ottawa.

"*The Board rejects the argument that a severance for mortgage purposes is different than a severance for other purposes.* Even regarding it in the light most favourable to the appellant one must only look to what would happen in the event of a default of the mortgage to realize that the title would be transferred.

"The Board, having reached this conclusion, finds that the condition extracted by the decision is a proper one under the provisions of *The Planning Act* and will, therefore, dismiss this appeal.

"The Board will also dismiss the cross-appeal filed by the City of Ottawa and the Ottawa Planning Board in that it is felt that *the 5% levy should be charged only against the land which is being severed.*"

Appeal and cross-appeal dismissed: *G. J. Simpson Construction Company Limited and the Committee of Adjustment of the City of Ottawa, O.M.B. R-2614-70, 18th January, 1971.*

Chapter XLIV

Highway — Dedication of Lands

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Dedication for Road Widening — On Former Conveyance — Error
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Road Widening — Appeal to Clarify condition imposed by Committee 256

Walkway — Provision Of — To Provide School Access — Condition to Severance 257

Dedication for Road Purposes — Equity of Giving Up Land Without Compensation — An appeal by the County of Wentworth against the refusal of the Committee to impose the requirement that a strip of land 10 feet in width across the frontage of the lot be dedicated to the County for future road widening as a condition of the consent to the conveyance.

“The subject property fronts on a country road. ‘In his evidence the County Engineer stated that a County Roads Needs Study indicated the desirability of reconstructing and widening this road when funds were available. He anticipated this work would start in 5 to 10 years, unless a more rapid increase in development and traffic necessitated its earlier commencement.’ The Official Plan, as amended, classifies this road as an arterial road requiring a 100 foot right-of-way.

“In its decision, refusing the request of the 10-foot dedication, the Committee stated that in its opinion a 66 foot right-of-way ‘is adequate for travel within the community.’

The Board decided that “It is difficult to determine from this decision whether the Committee of Adjustment had considered the Official Plan or had ignored it and considered only present needs.”

“The only evidence on behalf of the applicant for the conveyance was that of the owner and to the effect that he is opposed as a matter of principle as well as equity to giving up any land without compensation.”

“In my opinion there is no matter of principle involved inasmuch as the legislation provides for the dedication of land as a condition to the approval of a conveyance or severance. With respect to the matter of equity, there are two aspects to consider. Firstly, the practice of dedicating land in this manner for road widening has been long established and has resulted in considerable saving on land acquisition costs.

“Like other residents in the county, this applicant has received benefit from the dedications made by others. Is it equitable then to these others that he should escape making his contribution? I do not think so.

“Secondly, there is the question of equity as between those who are required to make dedications in the process of dividing and selling land and other rate-payers not so engaged. If the value of the land dedicated is recovered in the selling price of the lot or lots (and that is a logical assumption), the question becomes unimportant. Otherwise, it is a matter of degree. It may well be

argued on behalf of the other ratepayers that the land contribution is justified because the residential development resulting from subdivisions and single lot conveyances collectively is a major factor necessitating the widening of county and township roads.

“There is a considerable difference between the value of farmland frontage (before conveyance) and lot frontage (after conveyance). This difference is of much less importance to an applicant for a conveyance than it is to the county which would be faced with much higher land costs for road widenings if obliged to expropriate lot frontages from the new owners. The lack of evidence on costs and savings makes it difficult to reach other than a general conclusion that the cost to the vendor of the dedication of raw land, if not recovered in the price of the lot, is a minor one and balanced to a considerable degree by the benefit received from the dedications made by others and by the financial savings (and hence reduction in his taxes) of the governing body in avoiding expropriation of dwelling lot frontages.”

Appeal allowed, and dedication of the strip of land 10 feet in depth and 100 feet in length, added to the conditions imposed by the Committee of Adjustment: *Wentworth, County of, and the Committee of Adjustment of the Township of East Flamborough, O.M.B. P-747-66, 6 May, 1966.*

Dedication For Road Widening on Former Conveyance — Error Resulting in merger of properties — relief allowed — An appeal by the original applicant from a decision of the Committee refusing consent to a conveyance of a parcel of land having a frontage of 165 feet by a depth of 122 feet and an area of 20,130 square feet.

“In 1956 the subject parcel was conveyed to the appellants predecessor in title with the approval of the Planning Board upon the condition of a dedication of 10 feet for future road widening. The appellants, Mr. and Mrs. White, purchased the land in 1963 intending to erect a residential dwelling thereon which hope was never realized because of financial limitations.

“The property abutting to the south and fronting on the same road was for some time owned by Mrs. White’s mother, and in 1965 she deeded it to her daughter reserving unto herself a life interest.

“The area is substantially undeveloped except for a very few residences on smaller lots along the concession road and on 10 acre parcels some distance away. The Boy Scouts of America own a substantial holding surrounding the subject lands.”

“The council of the municipality had adopted an Official Plan on December 2, 1968 but which as yet has not received ministerial approval. The official plan text clearly indicates its rural characteristics and to allow development either within the existing hamlets or of an estate type of 2 or more acres. There was also indicated that there will be in future an additional 17 foot road widening.

“The existing zoning by-law requires a front yard set-back of 42 feet as well as requiring a lot area of 15,000 square feet and a minimum frontage of 75 feet.

“The Committee of Adjustment dismissed the application because they were of the opinion it was not in the public interest and did not comply with the general intent of the official plan.

“Appellants counsel submits that the situation now requiring approval for a severance occurred only by error, there being no intent to merge the two parcels. Section 26(1) (b) of *The Planning Act* requires approval in circumstances unless the grantor does not retain the fee in land abutting the land sought to be conveyed.

“Upon the basis of good planning principles such as enunciated in the proposed official plan, a lot, such as here, generally should not be created unless special circumstances exist. This will ensure the orderly growth of development within municipal boundaries.

“But here special circumstances do exist so that the Board should exercise its discretion and grant relief to the appellants. I am of the opinion that a *merger of the two properties was never intended and relief should be given if this has been effected*. The lot, although small, can comply with the existing zoning by-law and the official plan is not yet in effect.”

Appeal allowed: *White, John, and Jo Anne White and the Committee of Adjustment of the Township of Whitchurch, O.M.B. P-8312-69.*

Road Widening — Appeal to clarify condition imposed by Committee — An appeal by the original applicant against the decision of the Committee granting upon conditions an application for a conveyance of a parcel of land comprising 40 acres. The decision under appeal contained four conditions, one of which reads as follows:

“(a) Sufficient land be dedicated to the Township of East Flamborough along the 925 feet fronting on the Nelson-East Flamborough Town Line Road for road widening purposes to 33 feet from the centre line of the travelled road.’ ”

“The appellants stated that the uncertainty of the meaning of condition (a) was the sole ground for their appeal.

“When evidence was adduced at the hearing identifying ‘the travelled road’ mentioned in condition (a) as the existing narrow unimproved road extending south-easterly along part of the north-east limit of the appellants’ land, the appellants expressed their acceptance of the condition if it were amended by adding at the end of the condition ‘as established in Concession 6 and shown on plan of survey R.1511 by Sidney W. Woods, Ontario Land Surveyor.

“Counsel for the respondent consented to the proposed amendment.

“Accordingly I recommend that the appeal be allowed to the extent of amending condition (a) imposed by the decision of the Committee of Adjustment by adding at the end of the condition ‘as established in Concession 6 and shown on plan of survey R.1511 by Sidney W. Woods, Ontario Land Surveyor’.”

Appeal allowed: Condition amended: *Neeb, Wayne G., and Willard C. Neeb and the Committee of Adjustment of the Township of East Flamborough, O.M.B. P-8122-69, 12th May, 1969.*

Walkway — Provision Of — To Provide School Access — Condition to Severance — An appeal by an objector against the decision of the Committee of Adjustment granting a severance subject to several conditions, including one which was “. . . the conveyance of a walkway 8 feet, 6 inches in width along the easterly limit of Block “A”. The purpose of the walkway would be to allow children residing in houses erected in the area to gain access to a school to the north.

“The respondent originally proposed that the township should accept Block “A” and Block “B” for park purposes as the five per cent dedication under *The Planning Act*. The township, however, refused to agree to this and required a five per cent cash contribution.”

“The appellant saw the original draft plan which indicated these blocks would be used for park purposes. When he subsequently purchased Lot 12 on which the respondent had erected a residence has was still under the impression that this was the purpose for which these blocks would be used.”

“It is unfortunate that purchasers of property before they sign any agreement do not investigate more carefully the status of any blocks or open space areas which they are under the impression will be developed for park purposes. Unless such areas are owned or are to be acquired by either the municipality or a conservation authority he may be fairly certain they will not be developed as a park.”

“Here, if the appellant had inquired at the township offices before he purchased his property it would seem fairly evident that he would have ascertained that the township had refused to accept Block “A” and “B” for park purposes and he could have governed himself accordingly.”

“It was urged on behalf of the appellant that in any event the condition of providing the walkway should be varied and instead of being placed along the west limit of the appellant’s property, it should be placed along the west limit of the parcel to be severed.”

“The evidence indicates that the Township Engineering Department has given careful consideration to the location of this walkway. Originally they felt it should be along the west limit of the lands to be severed, but upon closer examination they concluded that it should be along the east limit for two reasons: the first was that the grades were much better and the second was that it tied in more effectively with the school layout to the rear. Their estimate was that it would cost about \$4,500 to construct the walkway along the east limit and more than 50 per cent more to construct it along the west limit.”

Appeal dismissed: *Jackson, James Edward, and the Committee of Adjustment of the Township of Toronto, O.M.B. P-2893-66, 21st July, 1967.*

CHAPTER XLV

Severance Fee

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Capital Improvements Levy — Land not to be improved with Buildings —

An appeal by the original applicant against two conditions imposed by the Committee in granting an application for consent to the conveyance of a parcel of land. The land has a width of approximately 165 feet by a depth of 462 feet and does not have any frontage on a street.

“The decision of the Committee reads as follows:

“ ‘that the application be granted as applied for, subject to the following conditions.

“ ‘1. Payment of \$1,200 per acre levy on 2.83 acres — \$3,336.00.

“ ‘2. 5% cash in lieu of 1.72 acres (5% of \$6,381) — \$319.00.

“ ‘3. Lot staked and O.L.S. plan of survey prepared for the Assessment Commissioner, Planning Director and the City Engineer.’

“The appeal relates to conditions 1 and 2 described above. The evidence for the appellant dealt with the fact that the land in question does not abut on the street and it was argued that because of this it could not be improved with buildings. In any case, the intention of the owner is not to develop this land. It is being acquired to add to larger holdings, and there is a possibility, that this land would be acquired by the City of Galt in exchange for lands in another location. Counsel for the appellant argued that for these reasons the 5% levy and the levy against the acreage for capital improvements were unreasonable as the effect of this conveyance was to change the ownership of the land only no development being planned, and therefore the conveyance would not create any demand for municipal services. Mr. Charlton further argued that under these conditions the proper time to extract any payment was at the time that development is proposed and not at the present time.

“The circumstances in this appeal are unusual. The Board agrees with Mr. Charlton’s argument that when no development is proposed, and where it seems that the City Corporation may eventually acquire land, it is unreasonable to extract the type of levy per acre that might be required where a plan of subdivision is being processed.

“The Board notes that this parcel does not abut on any street. Middleton Street as shown on Exhibit 1 was closed by by-law some time ago and the land conveyed to the abutting owner. For these reasons, it appears to the Board that Condition 1 imposed by the Committee of Adjustment should not be a consideration in the granting of this conveyance. For this reason the appeal

will be allowed in part and that Condition 1 as imposed by the Committee of Adjustment be deleted.”

Appeal allowed in part: *Bevan, Robert J., and the Committee of Adjustment of the City of Galt, O.M.B. R-1432-69, 23rd July, 1970.*

Condition Not Valid Where Dwelling Erected Many Years Ago — Severance Fee to Provide Services to New Dwellings — An appeal by an original applicant against a condition imposed by the Committee in granting a consent to a conveyance. The evidence indicated that the appellant had owned the lands for some years. “A house is erected on each parcel, one house was built about 15 years ago and the other is said to have been built almost 100 years ago. The appellant does not own any of the lands which abut either of these lots.” Wishing to sell the westerly halves of the lots he applied to the Committee for a consent to conveyance. “The Committee approved and attached the condition ‘that a \$400 severance fee be paid to the treasurer of the Township of Seneca.’

“From the evidence it appears that the purpose of this fee is to meet, in part at least, the costs of providing the municipal services for new dwellings.”

“As this dwelling has existed for many years, it would not appear to be reasonable to require the payment of the \$400.00 fee in this case. There was no evidence to show that the \$400.00 fee would be applied against any services that are to be constructed.”

Appeal allowed: *Smith, Joseph, and the Committee of Adjustment of the Township of Seneca, O.M.B. P-3121-67, 21st June, 1967.*

Condition To Consent — Service Charges — An appeal by the city against a decision of the Committee granting an application on the condition that total fixed charges of \$324.25 be paid to the city. Counsel for the applicant stated that his client was satisfied with the amount of fixed charges. Counsel for the city stated that over and above the said fixed charges the applicant should pay the city total deposits in the amount of \$1,474 composed as follows:

Granular base road	\$390
Pavement, curb and gutter	\$405
Storm sewers, catch basins and connections	\$244
Watermain	\$210
Sidewalk	\$225

“The subject lands lie on the west side of Park Road South in the City of Oshawa which road has a granular road base and a paved surface but no curbs and gutters. There is a catch basin in the vicinity of this property. The closest storm sewer branch line lies about 120 feet away from the subject lands. The watermain trunk line is in place but there are no sidewalks.

“Counsel for the appellant stated that Mr. Freeman should pay the amount of \$1,474 in regard to total deposit even though some services aforesaid are already in place and others are not, in order that the severed lot would be paying its share of services. Apparently the various cost items are calculated on a per foot basis in connection with the city’s subdivision policy which applies to all new plans of subdivision and also to severance situations such as this application. The aforesaid cost items apply only to the 50 foot frontage of Mr. Freeman’s lands which are being severed.

“Counsel for Mr. Freeman stated that as his client had owned the subject lands for some 20 years and had paid taxes thereon that his client had in effect paid for the existing services and that to charge him with the cost items aforesaid would in effect be forcing his client to paying for services twice over. Said counsel also contended that the service charges on a severance should not be on the same basis as that of a subdivision.

“There is merit in some of the argument of each counsel. A person in the position of Mr. Freeman should not be required to pay the full service charges on a severance that would be required in a new plan of subdivision especially where some services are already installed and the owner has been paying taxes for many years.

“Due to the lack of evidence relating to cost of services in regard to the subject lands it would appear that justice would be done to both parties herein if the total amount of \$1,798.25 were cut in half in this particular application which amount when rounded out would be \$900 . . .”.

Decision of Committee altered accordingly: *Oshawa, the City of, and the Committee of Adjustment of the City of Oshawa, O.M.B. P-2212-66, 5th January, 1967.*

Impost for Storm Sewer Fund Disallowed as Condition to Severance — Distinction drawn between lot in new subdivision and lots created by severance — An appeal by the original applicant against conditions imposed by the Committee upon granting an application ‘for the severance of a parcel of land having a perpendicular width of 87.8 feet by an average depth of 235 feet containing 0.477 acres. In addition to this parcel the applicant owns an abutting parcel containing 1.788 acres on which is erected a motel.’

“The proposed severance is for the purpose of erecting a residence which is permitted under the zoning by-law and it was granted subject to the payment of \$500.00 into the City Storm Sewer Fund and to the payment of a general service charge of \$500.00.

“There was filed as Exhibit 2 a statement prepared by the city engineer showing the average cost per lot to provide subdivision services in 1967. This shows an amount of \$2,862 per lot and does not include anything for schools.

“At the present time there is a combined sewer and a watermain on Beaver Dams Road on which the lot would front. The road is surface treated with no curb and gutter. While the present sewer functions reasonably well it is anticipated that a new storm sewer can be expected in from 7 to 12 years which, under the present policy of the city, would be paid for out of the general rate although a change to *The Local Improvement Act* is being considered.

“It was argued for the city that the obvious purpose of the legislation is to allow the city to treat consent lots the same as lots in a new plan of subdivision and since the owners of these paid for the services in their purchase price it was only fair to require the payment of a fee on consents. Counsel for the appellants argued that the city is simply making severances a vehicle for the raising of taxes under the guise of planning and if the legislature had intended this it would have said so in clear language.

“In the opinion of the Board there is a substantial difference between the situation where a person purchases a lot in a new subdivision where he pays the cost of the services installed by the developer through his purchase price and the situation in the appeal before the Board. In the former the purchaser is buying a new facility which may be expected to have a substantial lifetime, 15, 20 or 25 years. In the subject situation the owner or purchaser is being asked to pay for services either already installed and wholly or partly paid for through

special rates or in the general rate or for services which it is anticipated will be installed at some time in the rather indefinite future and from which he may receive little or no benefit and for which he could also be required to pay either in special or general rates.

“The Board is not satisfied that it has been established that an impost of \$500 for the storm fund or a similiar impost as a general service charge are proper charges and to that extent the appeal will be allowed.

“However, an impost of 5% of the land or its equivalent in cash has become widely accepted where lands are being subdivided and the Board does not feel that such would be unreasonable in this instance.

“The Board will accordingly allow the appeal in part and will grant the severance subject to the payment to the city of an amount equivalent of 5% of the current value of the land severed, to be used for public purposes as required by *The Planning Act*. If the value of the land cannot be agreed upon the Board may be spoken to.”

Appeal allowed in part — conditions varied: *Vorkapich, Steve, and Pearl Vorkapich and the Committee of Adjustment of the City of Niagara Falls, O.M.B. P-6436-68, 26th September, 1968.*

Provision of Services — Conditions — Alleged Hardship — An appeal by the original applicant against a condition imposed by the Committee in granting an application for severance.

The condition objected to was as follows:

“1) That the applicant enter into an agreement with the municipality to provide for the installation of municipal services, or if any or all required services are not presently available, a sum of money, hereunder set out, be paid over to the Corporation of the City of Brantford towards the cost of the future installation of such municipal service or services. These services include storm sewers, sanitary sewers, road reconstruction, curbs, sidewalks, park levy, outlet levy and trunk watermain levy.

Storm Sewers	(\$8.00 per ft.)	\$ 528.00
Sanitary Sewers	(\$5.00 per ft.)	330.00
Road Reconstruction	(\$1.75 per ft.)	115.50
Curbs	(\$3.50 per ft.)	231.00
Sidewalks	(\$4.50 per ft.)	297.00
Outlet Levy	(\$2.50 per ft.)	165.00
Trunk Watermain Levy	(\$.65 per ft.)	42.90
Park Levy	(\$.15 per ft.)	9.90
TOTAL		\$1,719.30

No objection was made to other conditions which required connection of plumbing to the municipal water supply system and the sanitary sewer, when installed, the installation of the septic tank and tile bed to the complete satisfaction of the County Health Unit and a stipulation that all construction on the property meets the requirements of the building and fire regulations.

“The evidence showed that the appellant had acquired this property about eleven years ago under the provisions of *The Veterans’ Land Act* and that the land has a width of 132 feet and a depth of 165 feet. the appellant’s home is situated on this land in a position which will allow one half of the lot to be sold. The appellant wishes to do this and has found a purchaser. An application was made to the Committee of Adjustment for a consent to the conveyance. This was granted subject to the conditions which appear above. The appellant objects to these conditions primarily because in her opinion:

1. They are a hardship. Her purchaser is not prepared to pay this amount.
2. There are no storm or sanitary sewers in the area and it may be some time before these are available to serve the subject property. She objects to paying for services before they are available to serve the property.
3. The proposed improvements exceed the number of improvements that exist in the area.”

Evidence was submitted that showed that the procedure described in the condition objected to was being followed in all cases where consents to conveyances are granted. The Board expressed the opinion that “the evidence in this matter does not show that this procedure is unreasonable. This will ensure that all new lots, whether created by a registered plan of subdivision or by a severance approved by the Committee, will be serviced to the same standards and this standard of servicing is the policy of the City of Brantford.”

Appeal denied: *Cooper, Shirley G., and the Committee of Adjustment of the City of Brantford, O.M.B. P-5434-68, 28th May, 1968.*

Transfer of Land to Wholly Owned Subsidiary — Payment of a Sum of Money not a Valid Condition — Agreement Condition Substituted — An appeal by the original applicant before the Committee against a condition imposed by the Committee in granting consent to the transfer of an irregular shaped parcel of land to a wholly owned subsidiary of the applicant. The condition imposed required “that the service charges as recommended by the subdivision control engineer, totalling \$9,679.48 be paid.”

Counsel for the appellant cited examples of three other parcels of land in this block sold for apartment sites for which consent had been obtained unconditionally and contended “. . . that there is neither authority for the Committee to require a cash payment for services already installed nor is there any justification for it.”

The payment required by the Committee was made up of three items: street lighting; street signs and sewage system lot levy. Evidence by the city’s subdivision control engineer was that “. . . the cost of certain services are met through local improvement assessments but the cost of the aforementioned three services cannot be collected in the same manner. He stated that it is now the normal practice of the city to require similar payments when lands are subdivided or severances granted.”

Counsel for the city stated that the present practice of requiring payments had not been adopted at the time the other parcels were sold and argued that there is now complete authority for the present practice.

The Board stated “it is my opinion that counsel for the appellant is technically correct in his contention that the Committee has not the power to impose as a condition payment of a sum of money for the provision of municipal services. It is my further opinion, however, that it is not improper that the city should require a contribution towards the cost of services mentioned herein providing, as appears to be the case, that the practice is general and non-discriminative.”

Decision of Committee varied “. . . by striking out the condition which was imposed and imposing a condition in lieu thereof that the applicant enter into an agreement with the city requiring the applicant to pay to the city a sum of \$9,679.48 and that upon the conditions of such agreement being fulfilled consent to the conveyance requested be granted:” *Park Lane Apartments Limited and the Committee of Adjustment of the City of Oshawa, O.M.B. P-1742-66, 19th September, 1966.*

Unreasonable — No Change in Land Use — Severance Fee Disallowed —

An appeal by the original applicant against a condition imposed by the Committee upon granting an application for severance.

“The appellant purchased the lands abutting the east side of Premier Road, as shown in Exhibit No. 1, during 1946 and 1947. The lands were vacant. He proceeded to erect buildings on the southerly portion and began the business of boat building which has continued to the present date. During the year 1948, he built his residence on the northerly parcel as shown in Exhibit No. 1. Wishing to sell the southerly lands and the boat building business he applied to the Committee of Adjustment of the City of North Bay for a consent to the severance of the subject lands. This was granted, subject to one condition.

“ ‘1. That the owner pay the city a Severance Fee of \$450.00’.

“The applicant, Allan M. Bishop, then appealed to this Board from the decision of the Committee ‘on the ground that the condition requiring the applicant to pay to the City of North Bay a severance fee of Four Hundred and Fifty (\$450.00) dollars is unreasonable and inequitable under the circumstances, or alternatively, the Committee of Adjustment for the City of North Bay has no jurisdiction to exact payment of the fee or to impose such a condition.’

“The subject lands are within a residential use zone established by the restricted area by-law of the municipality and the boat building business is a legally established non-conforming use.

“There is no intention to change the present use of the subject property.

“All of the evidence submitted in this appeal in my opinion shows that the only change in conditions that would come about with the sale of this property would be a change in ownership. The use of the land would not be changed; no change in the services to be provided by the city would be necessary.”

Appeal allowed and condition set aside: *Bishop, Allan M., and the Committee of Adjustment of the City of North Bay, O.M.B. R-264-70, 26th January, 1971.*

Chapter XLVI

Lands in Other Parcel — Conditions Imposed Upon

Condition To Consent — Not Valid — Dedication of Land in Another Parcel 270

Condition — Imposed on Remainder from which Parcel Severed 270

Condition To Consent — Not Valid — Dedication of Land in Another Parcel — A Committee of Adjustment imposed certain conditions to a consent to a conveyance and the county appealed to have another condition added, namely, that the applicant be required to dedicate 10 feet of the remainder of the parcel along the county road. “Evidence was adduced that it was the policy of the county in the case of county roads with 66 feet width to request dedication of 10 foot strips in order to arrive at a road width of 86 feet. This policy had been in force for some years and up to the end of 1964: there were some 250 to 300 deeds registered in various parts of the county which had the effect of such widening . . . a 50 per cent subsidy is paid by the government provided road widths are 86 feet.” There was evidence that, according to studies, the population would double by 1980, and it was pointed out that the remainder of the lot was too small to be subdivided.

Held, that the Committee of Adjustment (and the Municipal Board on appeal) had no right to impose, as a condition to their consent, the dedication of land taken from a part of the parcel which was not being conveyed. *Wentworth, County of, and the Committee of Adjustment for the Township of East Flamborough, O.M.B. N-9472-65, 17th August, 1965.*

Condition — Imposed on remainder from which parcel severed — An appeal by the Corporation of the City against a decision of the Committee granting upon a condition, an application for severance. A dwelling is situated on the northerly portion of the lands and the balance is vacant.

“These owners wish to divide the remainder into two parcels, the central parcel having a width of 58.3 feet and the southerly portion having a width of 60 feet, and wish to convey the central portion, which would be used for a two family dwelling (or semi-detached dwelling). The parcel to the south of the subject parcel would also be used for this purpose in the future. The Committee of Adjustment considered such an application and approved the separation of the parcel which was referred to as “The central parcel,” subject to certain conditions, which are detailed in the decision of the Committee. The City of Kitchener appealed this decision being of the opinion that additional conditions should be required. Before the time of the hearing before me, counsel had reached an agreement as to what all of the conditions should be and have reduced these to writing.

“I believe under the circumstances that it would be reasonable to allow the appeal by the City of Kitchener. I recommend that the City of Kitchener be requested to file with the Board a copy of the agreement applying to the subject lands, the terms of which have been agreed to by all counsel.

“It will be noted in this matter that the Committee of Adjustment have applied conditions not only to the land to be severed but also to the remainder. “I have some doubts that the Committee should, as a general practice, propose conditions in this fashion, on the remainder, however, in this case, because of the unusual nature of the property, I believe that the action of the Committee is reasonable.”

Appeal allowed: *Kitchener, City of, and the Committee of Adjustment of the City of Kitchener, re an application by Eugene Hanusch and Alma Hanusch, O.M.B. R-2109-70, 10th June, 1970.*

Chapter XLVII

Unreasonable Conditions

Grocery Store — Removal of Part of Cellar — Used for Storage Purposes
— Unreasonable Condition to Consent 274

Grocery Store — Removal of Part of Cellar — Used For Storage Purposes — Unreasonable Condition to Consent — An appeal by the owner of a grocery store requesting deletion of a condition to a consent.

The applicant stated that if he was to obey the condition “he must remove part of his cellar presently used for storage of soft drinks and lose an enclosed porch which is necessary for the storage of refuse and empty boxes.”

No objections were made to the appeal.

The Board decided that the condition was “unreasonable in the circumstances.”

Appeal allowed: Condition of the Committee deleted: *Radke, Arthur, and the Committee of Adjustment of the City of Kitchener, O.M.B. N-9431-65, 12th August, 1965.*

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